by the inspectors general to determine what was going on in this program and what, in fact, we are providing immunity for. That is the wrong sequence.

What we ought to do is to stay the cases, stay any proceedings on these cases, keep them in court, have the investigation done—a 1-year investigation, which is provided for in the bill, and then have 90 days in which Congress can review that investigation and the results of it. Only after that would the companies be able to go into court and seek immunity. That is a much more realistic way to proceed. I am glad we have cosponsors of this amendment who support the final bill, we have cosponsors who oppose the final bill.

I hope all Senators will look at this and see this as something they can support. It would improve the legislation.

Mr. President, I yield the floor.

The PRESIDING OFFICER. Who yields time? The Senator from Missouri.

Mr. BOND. Mr. President, the simple fact is, the IGs have already reviewed this bill. I agreed to a limited inspectors general overall review, even though the Senate Intelligence Committee has reviewed the program on a bipartisan basis. At a time when we are urging more congressional oversight, why would we again turn over the question of the executive branch's actions to an executive branch agency when the committee has clearly said there is no reason to deny retroactive liability protection to these areas?

Now, there are some who don't like the program at all. There are some who don't like the administration. They want to kick the administration by penalizing the companies, by dragging the companies through a continuing stretch of frivolous lawsuits. The Senator from Pennsylvania admitted that there is going to be no recovery. The lawsuits are designed to kill it. This amendment would get a veto, and we would have to start all over. Please vote no.

The PRESIDING OFFICER. The majority leader is recognized.

Mr. REID. Mr. President, for Members here, we are going to do this vote now, and then the Republican caucus—because of Senator Helm's funeral—is going to be today. So when the Republican caucus is completed, at 2, 2:15, we will have the final two votes before a 4 o'clock vote today on Medicare. So we will have two votes this afternoon starting at about 2 or 2:15.

The PRESIDING OFFICER. The question is on agreeing to the amendment.

The yeas and nays have been ordered.

The clerk will call the roll.

Mr. DURBIN. I announce that the Senator from Massachusetts (Mr. KENNEDY) is necessarily absent.

Mr. KYL. The following Senator is necessarily absent: the Senator from Arizona (Mr. MCCAIN).

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

The result was announced—yeas 42, nays 56, as follows:

[Rollcall Vote No. 166 Leg.]

YEAS—42

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

NAYS—56

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

NOT VOTING—2

Kennedy	McCain

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

RECESS

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

Thereupon, the Senate, at 12:54 p.m., recessed until 2:15 p.m. and reassembled when called to order by the Acting President pro tempore.

FISA AMENDMENTS ACT OF 2008—Continued

CLOTURE MOTION

The ACTING PRESIDENT pro tempore. Under the previous order, pursuant to rule XXII, the Chair lays before the Senate the pending cloture motion, which the clerk will report.

The assistant legislative clerk read as follows:

CLOTURE MOTION

We, the undersigned Senators, in accordance with the provisions of rule XXII of the Standing Rules of the Senate, hereby move to bring to a close debate on H.R. 6304, the FISA Amendments Act of 2008.

E. Benjamin Nelson, John D. Rockefeller IV, Thomas R. Carper, Mark L. Pryor, Bill Nelson, Dianne Feinstein, Robert P. Casey, Jr., Barbara A. Mikulski, Claire McCaskill, Kent Conrad, Daniel K. Inouye, Mary L. Landrieu, Joseph I. Lieberman, Sheldon Whitehouse, Evan Bayh, Ken Salazar.

The ACTING PRESIDENT pro tempore. By unanimous consent, the mandatory quorum call is waived.

There is 2 minutes of debate evenly divided. Who yields time?

Mr. BOND. I yield myself 1 minute in support of cloture.

The ACTING PRESIDENT pro tempore. The Senator from Missouri.

Mr. BOND. Mr. President, some opponents of this legislation claim that Congress is usurping the authority of the courts and that their trust lies in single, lifetime appointed judges in the judicial branch. I strongly disagree.

The Constitution set up three coequal branches of Government. Our Constitution gives Congress the ability to determine the jurisdiction of Federal courts. This power is particularly important and necessary today in sensitive matters of national security.

Further, the courts, including the FISA Court, have recognized the executive branch's expertise in matters of national security. They have stated that national security matters are not within their purview. It is entirely appropriate for this Congress to end this litigation and not entrust this matter any further to the courts with respect to the liability of particular participants in the program in the private sector. They can still sue the Government. We think a matter of fairness requires we protect those who assisted.

The ACTING PRESIDENT pro tempore. Does anyone seek time in opposition? If not, all time is yielded back.

The question is, Is it the sense of the Senate that the debate on H.R. 6304, the FISA Amendments Act of 2008, shall be brought to a close?

The yeas and nays are mandatory under the rule.

The clerk will call the roll.

The assistant legislative clerk called the roll.

Mr. DURBIN, I announce that the Senator from Massachusetts (Mr. KENNEDY) is necessarily absent.

Mr. KYL. The following Senator is necessarily absent: the Senator from Arizona (Mr. MCCAIN).

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

The result was announced—yeas 72, nays 26, as follows:

[Rollcall Vote No. 167 Leg.]

YEAS—72

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

NAYS—26

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

NOT VOTING—2

Kennedy	McCain

The ACTING PRESIDENT pro tempore. On this vote, the yeas are 72, the nays are 26. Three-fifths of the Senators duly chosen and sworn having voted in the affirmative, the motion is agreed to.

The question is on third reading of the bill.

The bill (H.R. 6304) was ordered to a third reading and was read the third time.

ELECTRONIC COMMUNICATION SERVICE PROVIDER

Mr. BOND. Mr. President, I rise to engage the distinguished chairman of the Select Committee on Intelligence in a brief colloquy.

Mr. ROCKEFELLER. I yield to the Senator.

Mr. BOND. I thank the Senator. Today we have been debating the merits of title II of this bill, the title that contains the carrier liability protection provisions. I know that we both agree that title II is critically necessary to protect our national security.

I would like us to focus for a moment on a small but important point related to the meaning of the term ''electronic communication service provider'' in title II. This is a term that was contained in the bipartisan Senate bill and was carried over in the current compromise bill.

The term ''electronic communication service provider'' was intentionally drafted to encompass the full spectrum of entities being sued in a covered civil action. For example, if a provider received a written request or directive and the only assistance provided to the Government by that provider's related corporate entities was pursuant to that written request or directive, the related corporate entities should be entitled to the protections of section 802 as long as any assistance they provided meets the requirements of that section.

Senator ROCKEFELLER, do we share this common understanding of the meaning of the term ''electronic communication service provider''?

Mr. ROCKEFELLER. Thank you, Senator Bond. I completely agree with your description of the meaning of ''electronic communications service provider.''

The definition itself makes clear that the term is intended to include entities that are telecommunications carriers, providers of electronic communications service, providers of remote computing services, and any other communication service provider that has access to transmitted or stored wire or electronic communications. Significantly, the definition also includes any parent, subsidiary, affiliate, successor, or assignee of such entities, as well as any officer, employee or agent of such entities.

Mr. BOND. Thank you Mr. Chairman.

Mrs. FEINSTEIN. Mr. President, as the debate over the FISA legislation comes to a conclusion, and as a member of the Intelligence Committee for 7½ years, I would like to comment once again on why I support this bill.

Let there be no doubt: 7 years after 9/11, our country continues to face serious threats. There are some who seek to do us grave harm.

So there is no more important need than obtaining accurate, actionable intelligence to help prevent such an attack.

At the same time, there have to be strong safeguards to ensure that the Government does not infringe on Americans' constitutional rights.

I believe this bill strikes an appropriate balance. It protects Americans and their privacy rights.

This legislation is certainly better than the Protect America Act in that regard and makes improvements over the 1978 FISA law.

This bill provides for repeated court review of surveillance done for intelligence purposes. It ends, once and for all, the practice of warrantless surveillance. It protects Americans' constitutional rights both at home and abroad. It provides the Government flexibility to protect our Nation. It makes it crystal clear that FISA is the law of the land—and that this law must be obeyed.

For more than 5 years, President Bush ran a warrantless surveillance program—called the terrorist surveillance program—outside of the law.

The administration did not have to do this. This specific program could have been carried out under FISA—and I believe it should have been.

With this bill, we codify and clarify that this limited, intelligence program will be carried out under the law.

This legislation allows the Government to collect information from members of specific terrorist groups or specific foreign powers. It is focused on collecting the content of communications from specific people. If those people are Americans, a warrant is required. Period.

So today, we are faced with three options:

No. 1. We can pass this bill. It is comprehensive and improves protections for U.S. persons and updates the FISA law to meet today's national security challenges; or

No. 2. We can extend the Protect America Act. This bill was a stop-gap measure passed last August for a 6-month temporary period to provide time to develop this legislation. It was meant to be temporary, and it should be only temporary.

No. 3. We can do nothing. If we do not pass legislation before mid-August, America will essentially be laid bare—unable to gather the critical intelligence that we need.

We will lose the ability to collect information on calls into and out of the United States from specific terrorist groups. The fact is, like it or not, the collection of signals intelligence is indispensable if we are to prevent another attack on our homeland.

Given these three options, I think the choice is clear.

The legislation is a significant improvement over the Protect America Act and over the 1978 FISA legislation.

Let me indicate certain substantial improvements:

This bill ends warrantless surveillance. Except in rare emergency cases, all surveillance has to be conducted pursuant to a court order.

The FISA Court reviews the Government's procedures and applications before surveillance happens.

This bill strengthens the court's review. Not only must the FISA Court approve any surveillance before it is started, this court is given more discretion, with a higher standard of review, over the Government's proposals. The Protect America Act limited the court to a rubberstamp review. This bill changes that.

This bill requires that surveillance be subject to court-approved minimization.

In 1978, Congress said that the Government could carry out surveillance on U.S. persons under a court warrant but required the Government to minimize the amount of information on those Americans who get included in the intelligence reporting. In practice, this actually means that the National Security Agency only includes information about a U.S. person that is strictly necessary to convey the intelligence. Most of the time, the person's name is not included in the report. That is the minimization process.

If an American's communication is incidentally caught up in electronic surveillance while the Government is targeting someone else, minimization protects that person's private information.

Now, the Protect America Act did not provide for court review over this minimization process at all. But this bill requires the court in advance to approve the Government's minimization procedures prior to commencing with any minimization program. That is good. That is the third improvement.

This bill prohibits reverse targeting. There is an explicit ban on reverse targeting. Now, what is reverse targeting? That is the concern that the National Security Agency could get around the warrant requirement.

If the NSA wanted to get my communications but did not want to go to the FISA Court, they might try to figure out who I am talking with and collect the content of their calls to get to me. This bill says you cannot do that. You cannot reverse target. It is prohibited. This was a concern with the Protect America Act, and it is fixed in this bill.

This bill goes further than any legislation before it in protecting U.S. person privacy rights outside of the

United States. It requires the executive branch to get a warrant anytime it seeks to direct surveillance of collected content from a U.S. person anywhere in the world. Previously, no warrant was required for content collection outside the United States.

Finally, there are numerous requirements in the bill for various review of the surveillance activities by agency heads and by inspectors general. The FISA Court and the Congress will be kept fully informed on the operations of this program in the future.

Finally, exclusivity. Mr. President, I have spoken multiple times on this floor about the importance of FISA's exclusivity provisions.

Before 1978, there was no check on the President's ability to conduct electronic surveillance. However, in 1978, Congress passed FISA, intending it to be the only way. Congress intended that FISA would be the only way—the exclusive means—to conduct surveillance on U.S. persons in the United States for foreign intelligence purposes. President Carter acknowledged that when he signed the bill.

Nonetheless, this administration took the position that FISA was not exclusive. First it stated that FISA didn't apply to these particular surveillance activities. Then it said that Congress gave it authority through the Authorization for the Use of Military Force in Afghanistan. Then it said that the President couldn't be bound by an act of Congress because he had his own authority under the Constitution.

I reject all of these arguments. And now a Federal court has addressed the subject of exclusivity head-on.

On July 2, Chief Judge Vaughn Walker of the U.S. District Court for the Northern District of California delivered a decision in a case brought against the U.S. Government for its surveillance. Judge Walker wrote:

> 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 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. (M:06–cv–01791–VRW, p. 23)

These are powerful words in the opinion.

So it is not just clear legislative intent, it is the current judicial position that FISA was and is exclusive.

Yet, before the recess, it was asserted on the floor that the President has authority under article II of the Constitution to go around FISA. He does not, in my view.

Moreover, they claim that the exclusivity language in the bill acknowledges the President's constitutional authority to conduct electronic surveillance outside of FISA. It does not.

As the author of this language, let me state emphatically that the clear intent of the language is to bind the Executive to this law.

Now, certain Senators are contending that this exclusivity language would allow the President to go outside of FISA.

Let me be clear: this provision is not intended to, nor does it, provide or recognize any new authority to conduct electronic surveillance in contravention of FISA.

It was drafted very carefully with input and agreement from people from both sides of the Intelligence Committee and the Judiciary Committee, the Department of Justice, and the Office of the Director of National Intelligence.

The only way the President can move outside of FISA will be with another specific statute, passed by both Houses and signed by the President.

In summary, the exclusivity language in this bill absolutely does not recognize the President's claimed ''Article II'' authorities to conduct surveillance in contravention of FISA or any other law.

The bottom line is that FISA has always been the exclusive means to conduct electronic surveillance, and it continues to be the exclusive means. And no President, now or in the future, has the authority to move outside the law.

Finally, Mr. President, I want to set straight who in Congress was notified about the program and when. Some are saying that the Congress was briefed.

This is not true.

Eight Members of the House and Senate were briefed on the program around the time of its inception, shortly after September 11, 2001: the House and Senate leadership and the chairmen and ranking members of the Intelligence Committees.

The 13 rank-and-file members of the Senate Intelligence Committee, who by law are to be kept ''fully and currently informed'' of intelligence activities, were not briefed until well after the program was publicly disclosed in the New York Times in December 2005—4 years later. I want to make this crystal clear.

The chairman and the ranking member of the Judiciary Committee—which shares jurisdiction over FISA—were not briefed until a significant period of time after the full membership of the Intelligence Committee was notified.

Finally, I want to say a few words about immunity.

Let me be clear, this particular immunity language is not ideal. I would have approached this issue differently.

When the legislation was before the Senate in February, I moved an amendment to require that the FISA Court conduct a review of whether the telecommunications companies acted lawfully and in good faith. Unfortunately, my amendment was not adopted, but I continue to believe it is the appropriate standard.

I have cosponsored an amendment by Senator BINGAMAN that would stay action on all pending lawsuits until 90 days after Congress receives a report, required elsewhere in this bill, by the relevant inspectors general on the President's surveillance program. That would give Congress a chance to decide on immunity based on a third-party review. If lawmakers took no action within 90 days, the provisions would go into effect.

I have spent a great deal of time reviewing this matter. I have read the legal opinions written by the Office of Legal Counsel at the Department of Justice. I have read the written requests to telecommunications companies. I have spoken to officials inside and outside the Government, including several meetings with the companies alleged to have participated in the program.

The companies were told after 9/11 that their assistance was needed to protect against further terrorist acts. This actually happened within weeks of 9/11. I think we can all understand and remember what the situation was in the 3 weeks following 9/11.

The companies were told the surveillance program was authorized and that it was legal.

I am one who believes it is right for the public and the private sector to support the Government at a time of need. When it is a matter of national security, it is all the more important.

I think the lion's share of the fault rests with the administration, not with the companies.

It was the administration who refused to go to the FISA Court to seek warrants. They could have gone to the FISA Court to seek these warrants on a program basis, and they have done so subsequently.

So I am pleased this bill includes independent reviews of the administration's actions to be conducted by the inspectors general of the relevant departments.

This bill does provide a limited measure of court review. It is not as robust as my amendment would have provided, but it does provide an opportunity for the plaintiffs to be heard in court, and it provides an opportunity for the court to review these request documents.

Mr. President, this is not a perfect bill. It is the product of compromise designed to make sure that it provides the needed intelligence capabilities and the needed privacy protections.

I think the bill strikes that balance and that the Nation will be made more secure because of it.

Mr. BIDEN. Mr. President, I rise today in opposition to the Foreign Intelligence Surveillance Amendments Act of 2008. As one of the cosponsors of FISA in 1978, I am fully aware of the importance of giving the administration the surveillance tools it needs to keep us safe. This is a very difficult vote and I do not question the judgment of those who have chosen to support the bill. But because I am concerned that this bill authorizes surveillance that is broader than necessary to

protect national security at the expense of civil liberties and because it gives blanket retroactive immunity to the telephone companies, I have decided not to support it.

One of the defining challenges of our age is to combat international terrorism while maintaining our national values and our commitment to the rule of law and individual rights. These two obligations are not mutually exclusive. Indeed, they reinforce one another. Unfortunately, the President's national security policies have operated at the expense of our civil liberties. The examples are legion, but the issue that prompted the legislation before us today is one of the most notorious—his secret program of eavesdropping on Americans without congressional authorization or a judge's approval.

After insisting for a year that the President was not bound by the Foreign Intelligence Surveillance Act's clear prohibition on warrantless surveillance of Americans, the administration subjected its surveillance program to FISA Court review in January of 2007.

Then, last August, citing operational difficulties and heightened threats that required changes to FISA, Congress passed the Protect America Act—over my objection and that of many of my colleagues. I am submitting with this statement the objections I made at that time.

The Protect America Act, which sunset last February, amended FISA to allow warrantless surveillance, even when that surveillance intercepted the communications of innocent American citizens inside the United States.

The administration identified two problems it faces in conducting electronic surveillance under FISA. First, the administration wanted clarification that it did not need to obtain a FISA warrant in order to conduct surveillance of calls between two parties when both of those parties are overseas. Because of the way global communications are now transmitted, many communications between people all of whom are overseas are nonetheless routed through switching stations inside the United States. In other words, when someone in Islamabad, Pakistan calls someone in London, that call is likely to be routed through communications switching stations right here in the United States. Congress did not intend FISA to apply to such calls, and I support a legislative fix to clarify that point.

The second problem the administration identified is more difficult. Even assuming that the Government does not need a FISA warrant to tap into switching stations here in the United States in order to intercept calls between two people who are abroad—between Pakistan and England, for example—if the target in Pakistan calls someone inside the United States, FISA requires the government to get a warrant, even though the government is ''targeting'' the caller in Pakistan.

The administration wants the flexibility to begin electronic surveillance of a ''target'' abroad without having to get a FISA warrant to account for the possibility that the ''foreign target'' might contact someone in the United States. I agree with the administration's assessment of the problem, but this bill would go far beyond what is necessary to meet these new technological challenges.

This bill's approach would significantly expand the scope of surveillance permitted under FISA by exempting entirely from the warrant requirement any calls to or from the United States, as long as the Government is ''targeting'' someone reasonably believed to be located outside the United States.

The Government could acquire these communications regardless of whether either party is suspected of any wrongdoing and regardless of how many calls to innocent American citizens inside the United States were intercepted in the process.

Although the bill gives the FISA Court a greater role than earlier bills did, it still fails to provide for a meaningful judicial check on the President's power. The FISA Court's role would be limited to reviewing the Government's targeting procedures and its minimization procedures—the procedures it uses to limit the retention and dissemination of information it has required. But it would be required to approve them as long as they met the general requirements of the statute, which is written broadly.

In addition, unlike the Judiciary Committee version of the bill I supported earlier this year, this bill neither limits the Government's use of information collected under procedures the FISA Court later deems inadequate, nor does it expressly give the FISA Court authority to enforce compliance with orders it issues.

I am concerned that because of the way this bill is drafted, it could be interpreted to preclude the FISA Court from ordering the Government to destroy all communications of innocent Americans that it incidentally collects during its surveillance. If I were certain that the FISA Court had the power to order the destruction of the communications of innocent Americans, it might tip the balance in favor of my supporting the bill, even though I oppose blanket retroactive immunity.

As for immunity, although I can understand why in the immediate aftermath of the attacks on September 11 the telephone companies would have cooperated with the Government, I believe it is inappropriate for Congress to grant blanket retroactive immunity without knowing what it is granting immunity for.

Furthermore, cases against the carriers are already making their way through the courts and I have every confidence in the court's ability to interpret and apply the law. Retroactive immunity would undermine the judiciary's role as an independent branch of government.

When the Senate passed FISA, after extensive hearings, thirty years ago by a strong bipartisan vote of 95 to 1, I stated that it ''was a reaffirmation of the principle that it is possible to protect national security and at the same time the Bill of Rights.'' I still believe that is possible, but not if we enact this bill.

Mr. President, I am in support of Senator ROCKEFELLER's proposal to address shortcomings in our intelligence collection authorities. I have studied Senator ROCKEFELLER's bill closely and believe that it is an appropriate, temporary fix that adequately protects both our national security and Americans' privacy and civil liberties. It includes important safeguards against executive abuse—safeguards that are essential for an administration that has demonstrated so frequently that it simply cannot be trusted.

The Rockefeller bill is narrowly tailored to address the two problems the administration has said it faces in conducting electronic surveillance under the Foreign Intelligence Surveillance Act, as that law is currently written.

First, the administration wants clarification that it does not need to obtain a FISA warrant in order to conduct surveillance of calls between two parties when both of those parties are overseas. Because of the way global communications are now transmitted, many communications that take place entirely overseas are nonetheless routed through switching stations inside the United States. In other words, when someone in Islamabad, Pakistan, calls someone in London, England, that call may well be routed through communications switching stations right here in the United States. FISA was never intended to apply to such calls, and I support a legislative fix to clarify that point.

The second problem the administration has identified is more difficult. Although neither FISA nor the Constitution requires the President to get a warrant if the target of surveillance is in Pakistan calling London, or anywhere else outside the United States, if the target in Pakistan calls someone in the United States, FISA requires the Government to get a warrant, even though the Government is ''targeting'' the caller in Pakistan.

Senator ROCKEFELLER's bill would give the Government great flexibility to conduct surveillance of targets abroad, with prior approval of the FISA Court, while protecting the privacy of innocent Americans in the United States.

Under this bill, the FISA Court would be required to issue a warrant upon a minimal showing that the targets of surveillance are overseas and not in the United States. The bill provides protection for innocent Americans in the United States—if the foreign target's communications began to involve a significant number of calls

into the United States, the Government would be required to end surveillance pending receipt of a new FISA Court order that the target overseas was a suspected terrorist.

Senator ROCKEFELLER's approach also ensures robust oversight. Congress would get the actual FISA Court orders, and, every 60 days, Congress would receive the list of targets who turned out to be in the United States and the number of persons inside the United States whose communications were intercepted. This is more information than Congress receives today, and it would enable us to verify the administration's claim that they are targeting suspected terrorists without unnecessarily violating the privacy of law-abiding Americans.

Senator ROCKEFELLER's bill sunsets in 6 months, at which point Congress can, if necessary, craft a permanent, sensible, and Constitutional fix to FISA that ensures the American people are protected from terrorism and from encroachments on their civil liberties and individual freedoms. The President has asked that we go further, that we give him more unchecked power and discretion to eavesdrop on Americans' conversations without a warrant and without congressional oversight. His request raises many concerns, and Congress should deny it.

The President's proposal would significantly expand the scope of surveillance permitted under FISA by exempting entirely any calls to or from the United States, as long as the Government is directing its surveillance at someone reasonably believed to be located abroad. The Attorney General and the Director of National Intelligence would make this determination on their own, and they would merely certify, after-the-fact, to the FISA Court that they had reason to believe the target is outside the United States, regardless of how many calls to innocent American citizens inside the United States were intercepted in the process. This would be a breathtaking and unconstitutional expansion of the President's powers and it is wholly unnecessary to address the problems the administration has identified.

Furthermore, the administration would not even limit this unchecked surveillance to persons suspected of involvement in international terrorism—it would cover the collection of any foreign intelligence information, which can include the collection of trade secrets and other information unrelated to the threat posed by al-Qaida.

I have said before that one of the defining challenges of our age is to effectively combat international terrorism while maintaining our national values and our commitment to the rule of law, individual rights, and civil liberties. Unfortunately, the President has attempted to protect America by unnecessarily betraying our fundamental notions of constitutional governance and individual rights and liberties.

I will support giving the administration the tools it needs to track down terrorists, but I will not give the President unchecked authority to eavesdrop on whomever he wants in exchange for the vague and hollow assurance that he will protect the civil liberties of the American people. This administration has squandered the trust of Congress and the American people.

The administration's approach is constitutionally infirm and it is unnecessary to address the specific problems it has identified. The Rockefeller bill is a carefully calibrated approach that protects the American people from both terrorism and violations of their civil liberties.

I urge my colleagues to join me in supporting it.

Mr. BYRD. Mr. President, in 1771, Samuel Adams observed:

> The liberties of our country, the freedom of our civil Constitution, are worth defending at all hazards; and it is our duty to defend them against all attacks. We have received them as a fair inheritance from our worthy ancestors; they purchased them for us with toil and danger and expense of treasure and blood, and transmitted them to us with care and diligence. It will bring an everlasting mark of infamy on the present generation, enlightened as it is, if we should suffer them to be wrested from us by violence without a struggle, or to be cheated out of them by the artifices of false and designing men.

Under the artifice of defending our nation from terrorists, President Bush would have Congress surrender our liberties and the freedom of our civil Constitution. This bill, the Foreign Intelligence Surveillance, FISA, Amendments Act of 2008, is supposed to correct unconstitutional authorities contained in last year's ''Protect America Act'' that permitted widescale warrantless Government surveillance of innocent Americans' private international communications, much of it facilitated by telecommunications companies in a manner that is under court review. However, this bill undercuts that judicial review and, in effect, grants complete retroactive immunity to those companies for anything illegal they might have done for the last 6 years. That provision undermines the Constitution's fourth amendment protections.

This bill continues Government surveillance of communications coming into and out of the United States without full fourth amendment protections. Remember the fourth amendment? It reads:

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

The President would have you believe that this bill would provide additional powers to prevent another 9/11. But 9/11 did not happen for want of these powers. It was not a failure of Government to monitor private communications. Rather, it was a failure of the Government to monitor the reports of the FBI and of the intelligence community. It happened because the administration did not take seriously reports suggesting that what actually happened was being planned by al-Qaida. Just as he exploited 9/11 to lead us to war in Iraq, President Bush now wants to exploit his failures to attack our fundamental freedoms—freedoms that formed the foundations of this Nation.

There is no doubt that certain accommodations need to be made to address advances in technology. However, this bill goes too far. If the Government can collect all communications coming into or out of the United States, using powerful computers to shop among them without probable cause that the person making or receiving the communication is involved in anything illegal, and without any court providing a check upon the abuse of that power, that does not meet my ''reasonable man's'' definition of fourth amendment compliance. And that is not the ''fair inheritance'' won for us by our Founders at such a great price.

Mrs. CLINTON. Mr. President, one of the great challenges before us as a nation is remaining steadfast in our fight against terrorism while preserving our commitment to the rule of law and individual liberty. As a Senator from New York on September 11, I understand the importance of taking any and all necessary steps to protect our Nation from those who would do us harm. I believe strongly that we must modernize our surveillance laws in order to provide intelligence professionals the tools needed to fight terrorism and make our country more secure. However, any surveillance program must contain safeguards to protect the rights of Americans against abuse, and to preserve clear lines of oversight and accountability over this administration. I applaud the efforts of my colleagues who negotiated this legislation, and I respect my colleagues who reached a different conclusion on today's vote. I do so because this is a difficult issue. Nonetheless, I could not vote for the legislation in its current form.

The legislation would overhaul the law that governs the administration's surveillance activities. Some of the legislation's provisions place guidelines and restrictions on the operational details of the surveillance activities, others increase judicial and legislative oversight of those activities, and still others relate to immunity for telecommunications companies that participated in the administration's surveillance activities.

While this legislation does strengthen oversight of the administration's surveillance activities over previous drafts, in many respects, the oversight in the bill continues to come up short. For instance, while the bill nominally calls for increased oversight by the FISA Court, its ability to serve as a meaningful check on the President's power is debatable. The clearest example of this is the limited power given to

the FISA Court to review the government's targeting and minimization procedures.

But the legislation has other significant shortcomings. The legislation makes no meaningful change to the immunity provisions. There is little disagreement that the legislation effectively grants retroactive immunity to the telecommunications companies. In my judgment, immunity under these circumstances has the practical effect of shutting down a critical avenue for holding the administration accountable for its conduct. It is precisely why I have supported efforts in the Senate to strip the bill of these provisions, both today and during previous debates on this subject. Unfortunately, these efforts have been unsuccessful.

What is more, even as we considered this legislation, the administration refused to allow the overwhelming majority of Senators to examine the warrantless wiretapping program. This made it exceedingly difficult for those Senators who are not on the Intelligence and Judiciary Committees to assess the need for the operational details of the legislation, and whether greater protections are necessary. The same can be said for an assessment of the telecom immunity provisions. On an issue of such tremendous importance to our citizens—and in particular to New Yorkers—all Senators should have been entitled to receive briefings that would have enabled them to make an informed decision about the merits of this legislation. I cannot support this legislation when we know neither the nature of the surveillance activities authorized nor the role played by telecommunications companies granted immunity.

Congress must vigorously check and balance the president even in the face of dangerous enemies and at a time of war. That is what sets us apart. And that is what is vital to ensuring that any tool designed to protect us is used—and used within the law—for that purpose and that purpose alone. I believe my responsibility requires that I vote against this compromise, and I will continue to pursue reforms that will improve our ability to collect intelligence in our efforts to combat terror and to oversee that authority in Congress.

Mr. REED. Mr. President, I wish to spend a few minutes discussing why I vote against final passage of H.R. 6304, the House companion to S. 2248, the FISA Amendments Act of 2008. I would like to begin by commending Senators ROCKEFELLER and BOND who have negotiated this bill, literally for months, in order to reach the compromise that we voted on today.

I believe that many aspects of this bill are an improvement, not only to the Protect America Act which passed last August, but also to S. 2248, the bill we voted on in February. I opposed both of those bills. This compromise bill specifies that FISA and certain other statutes are the exclusive means for conducting surveillance on Americans for foreign intelligence purposes. It requires the inspectors general of the Department of Justice, the Department of Defense, the National Security Agency, and the Director of National Intelligence to conduct a comprehensive review and issue a report on the President's surveillance program. It requires the intelligence community to create reverse targeting guidelines so that the National Security Agency cannot conduct surveillance of a U.S. citizen without a warrant by targeting a foreigner. Finally, it sunsets this legislation in 4½ half years rather than the 6 years called for in the original bill. All of these measures increase oversight and help protect civil liberties and are helpful changes.

However, title II of this bill still grants retroactive immunity to telecommunications companies for actions they may or may not have taken in response to administration requests that may or may not have been legal. As I have stated before, the administration has had years to provide the written legal justification that they gave the telecommunications companies when they requested their cooperation in the aftermath of September 11. A few of my colleagues on the Judiciary Committee and Intelligence Committee were allowed to read certain documents related to this matter after extensive negotiations with the administration. However, I, and the rest of my Senate colleagues who are not on those committees, were denied access to those documents. In addition, the telecommunications companies who have been named in several lawsuits have been prohibited by the administration from providing any information regarding this issue to the courts, to the plaintiffs, to Members of Congress, or to the public. In good conscience, I could not simply trust with blind faith that the administration and telecommunications companies took proper, lawful actions.

I therefore supported three attempts to strip or limit this immunity during today's debate. First, Senator DODD offered an amendment to strike title II. When that failed, Senator SPECTER offered an amendment to require a Federal district court to assess the constitutionality of the terrorist surveillance program before granting retroactive immunity to the companies alleged to have assisted the program. This amendment also failed. As a final effort, Senator BINGAMAN offered an amendment which would have stayed all pending cases against the telecommunication companies related to the Government's warrantless surveillance program and delayed the effective date of the immunity provisions until 90 days after Congress receives the required comprehensive report of the inspectors general regarding the program. If Congress took no action in that time, the telecommunications companies would receive immunity. Unfortunately, that amendment also failed.

The Senate had three opportunities to implement sensible measures to ensure that the grant of immunity to the telecommunication companies was appropriate. But these amendments were voted down. I believe the result sets a dangerous precedent. We must take the steps necessary to thwart terrorist attacks against our country, but these steps must also ensure that the civil liberties and privacy rights that are core to our democracy are protected. This bill fails to meet this threshold. For these reasons, I oppose the passage of this bill.

The ACTING PRESIDENT pro tempore. There is now 2 minutes of debate equally divided.

Who yields time?

Mr. ROCKEFELLER. Mr. President, we have been on this bill now for in effect a year.

The ACTING PRESIDENT pro tempore. The Senator will suspend. Will Senators please take their seats.

Mr. ROCKEFELLER. And we have improved enormously the Senate bill that we voted out last year with a veto-proof majority. The House had not reacted to this bill well, particularly the immunity part, as well as the title I part. We went at them aggressively, Vice Chairman BOND and myself, to try to get the Senate to move toward the House position. We were successful in that.

As I have said, Speaker PELOSI, who didn't want anything to do with the bill at the beginning, actually went to the floor of the House before they voted on it to pass it out and said: This may not be a perfect bill, but it is a bill that I certainly am going to vote for, and that is why I am here asking you to join me in so doing.

I, in my lesser role, am doing the same thing.

This is a historic bill. It has the particular virtue that over the course of the next 4 years, the next President of the United States will have a chance to review the bill and see if any changes need to be made.

I strongly hope, on what I consider to be a very major piece of national security and civil liberties legislation, that my colleagues will vote to support the bill.

The ACTING PRESIDENT pro tempore. Does anyone seek time in opposition?

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

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

The bill having been read the third time, the question is, Shall the bill pass?

The clerk will call the roll.

The legislative clerk called the roll.

Mr. DURBIN. I announce that the Senator from Massachusetts (Mr. KENNEDY) is necessarily absent.

Mr. KYL. The following Senators are necessarily absent: the Senator from Arizona (Mr. MCCAIN) and the Senator from Alabama (Mr. SESSIONS).

Further, if present and voting, the Senator from Alabama (Mr. SESSIONS) would have voted ''yea.''

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

The result was announced—yeas 69, nays 28, as follows:

[Rollcall Vote No. 168 Leg.]

YEAS—69

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

NAYS—28

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

NOT VOTING—3

Kennedy	McCain	Sessions

The bill (H.R. 6304) was passed.

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

The motion to lay on the table was agreed to.

MEDICARE IMPROVEMENTS FOR PATIENTS AND PROVIDERS ACT—MOTION TO PROCEED

Mr. REID. What is the matter now before the Senate?

The PRESIDING OFFICER. Under the previous order, the motion to proceed to the motion previously entered to reconsider the vote whereby cloture on the motion to proceed to H.R. 6331 was not agreed to, is agreed to and the time until 4 p.m. will be evenly divided before the cloture vote.

Mr. REID. I ask unanimous consent that there be 1 hour prior to the vote, which is now set for 4 o'clock, that the time be divided, with the last 20 minutes for Senator MCCONNELL and Senator REID of Nevada; that I have the last 10 minutes; that the other 40 minutes be equally divided and controlled between the chairman of the Finance Committee, Senator BAUCUS, and the ranking member of the committee, Senator GRASSLEY.

That means there will be 20 minutes for Senator MCCONNELL and me, and there will be 40 minutes remaining, equally divided.

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

Who yields time?

Mr. BAUCUS. Madam President, may I inquire, what is the pending business before the Senate?

The PRESIDING OFFICER. On reconsideration of cloture on the motion to proceed to H.R. 6331.

Mr. BAUCUS. Madam President, the Prophet Isaiah urged:

Cease to do evil,
learn to do good;
seek justice,
correct oppression;
defend the fatherless,
plead for the widow.

Since 1965, Medicare has been about defending the disabled. Medicare has been about providing for the elderly. From its beginning, Medicare has been about doing good. Before Medicare, old age was very much about widows.

In 1960, a man could expect to live a little more than 66 years, whereas a woman could expect to live past 73. Now, with the help of Medicare providing health care for the elderly, men can expect to live beyond 75 and women can expect to live beyond 80.

Before Medicare, in 1959, more than 35 percent of the elderly lived in poverty. When President Johnson signed the Medicare Act into law, he said of the elderly:

Most of them have low incomes. Most of them are threatened by illness and medical expenses that they cannot afford.

Thus, before Medicare, the elderly received poorer health care. They endured more pain. They met early death. But then, 43 years later, in July 1965, with my fellow Montanan Mike Mansfield looking on, President Johnson signed the Medicare Program into law. This chart to my left shows the picture of that day.

That day President Johnson said:

No longer will older Americans be denied the healing miracle of modern medicine. No longer will illness crush and destroy the savings they have so carefully put away over a lifetime so they might enjoy dignity in their later years. No longer will young families see their own hopes eaten away simply because they are carrying out their deep moral obligations to their parents.

Further quoting President Johnson:

And no longer will this Nation refuse the hand of justice to those who have given a lifetime of service and wisdom and labor to the progress of this country.

Thus, from its beginning, Medicare has been a moral issue. Medicare has been about doing good, about doing what is right. I come to the floor today to speak in defense of Medicare. I come to plead for the widow. I come to fight for the disabled.

Today Medicare is threatened. Health care costs have been growing rapidly. Federal Reserve Chairman Bernanke told the Finance Committee's health care summit:

Health care has long been and continues to be one of the fastest growing sectors in the economy. Over the past 4 decades, this sector has grown, on average, at a rate of about 2.5 percentage points faster than the gross domestic product.

But the fruits of the 1997 law threaten to cut—yes, cut—payments to doctors who treat Medicare beneficiaries unless we act. If we do not act, the law will force cuts in payments to doctors by 10.6 percent. We have to stop that cut.

That cut threatens access to care for America's seniors. Already some providers are declining Medicare patients. My colleagues hear that constantly. Fewer and fewer doctors are taking Medicare; more and more are dropping. Why? Because reimbursement rates are already too low, and unless we act today, those reimbursement rates will be much lower.

Doctors know about these cuts. My colleagues in their home States hear this constantly. I am sure, over the July 4 break, they heard over and over that the doctors are very concerned about Medicare reimbursement. The share of doctors accepting new Medicare patients has been falling. It is falling for those who accept and do not accept Medicare. It is falling for those military personnel in TRICARE who seek services from doctors as well because TRICARE payments are tied to Medicare.

Unless we act, those patients in the TRICARE system, our military service men and women, will also find that their doctors are not treating them either. That trend will accelerate if we do not act. An American Medical Association survey found if the scheduled cuts stay in effect, 60 percent of doctors will have to limit the number of new Medicare patients whom they treat; 60 percent would have to limit, unless we restore these cuts.

These cuts also threaten access to health care for our military men and woman. As I mentioned, TRICARE uses the Medicare formula to pay their doctors. Those cuts could endanger health care for military retirees and even for those on Active Duty.

I do not think that is well understood, that TRICARE is tied to Medicare. If we cut Medicare, we cut TRICARE. That means about 9 million American service men and women, Active Duty and retirees, the doctors who service them will no longer provide that service; a 60-percent reduction.

The Military Officers Association of America reports that declining participation of providers due to low reimbursements is already one of the most serious health care problems facing military families.

Real and threatened cuts in the level of Medicare reimbursements have caused many providers to stop accepting new TRICARE patients.

Since 1965, there have been those few who did not think that Medicare was good. There have been those who have sought to call it evil. In the 1960s, there were those on the fringe who called it socialized medicine. In 1995, there were those who said it was going to wither on the vine, those who wanted to do away with Medicare. But the truth is, from the start Medicare has had broad,