

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 co-equal 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      |