United States of America

Congressional Record

PROCEEDINGS AND DEBATES OF THE 110th CONGRESS, SECOND SESSION

Vol. 154 WASHINGTON, WEDNESDAY, JULY 9, 2008 No. 112

Senate

The Senate met at 9:30 a.m. and was called to order by the Honorable BENJAMIN L. CARDIN, a Senator from the State of Maryland.

PRAYER

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

Let us pray.

Almighty God, in whose keeping are the destinies of people and nations, You have worked wonders on sea, land, and air. You rule forever and judge the universe from Your throne.

Lord, come into this Chamber and throughout this Senate and endue our fallible minds with Your higher wisdom. Give our Senators the greatness of soul to match the magnitude of our national concerns. Be their fortress in times of trouble. May the critical decisions first be formed in their inmost being before being made in the public forum. Redeem their failures, reward their integrity, transform their tasks into service for You, and crown this day with the benediction of Your peace.

We pray in Your strong Name. Amen.

PLEDGE OF ALLEGIANCE

The Honorable BENJAMIN L. CARDIN 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 legislative clerk read the following letter:

U.S. SENATE,
PRESIDENT PRO TEMPORE,
Washington, DC, July 9, 2008.

To the Senate:

Under the provisions of rule 1, paragraph 3, of the Standing Rules of the Senate, I hereby appoint the Honorable BENJAMIN L. CARDIN, a Senator from the State of Maryland, to perform the duties of the Chair.

ROBERT C. BYRD,
President pro tempore.

Mr. CARDIN 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 leader remarks, the Senate will resume consideration of the FISA legislation. There will be about 2 hours of debate prior to a series of votes; therefore, Senators should expect a series of up to five votes beginning about 11:15 or 11:30 today.

We have a series of extremely important votes today. Every one of these FISA votes is very important. Likely, most of them will not be very close. That is what I have been told by my staff, but I really don't know whether that is the case. But on these votes, everyone should be here on time. We are getting a little out of the habit of being here on time. If there is a close vote, the Republican leader knows that we hold that open to make sure a vote is not decided because someone is not here if they are in the area. But that is rarely the case. Of all the many votes we have here, there are not too many that are that close. So everyone today should understand that we are going to enforce the 15-minute rule and the 10-minute rule. I hope everyone will be here ready to vote when the time comes.

ORDER OF PROCEDURE

Mr. President, I ask unanimous consent that the vote sequence for amendments with respect to H.R. 6304 be as follows: Dodd, Specter, Bingaman; with all other provisions of the previous order remaining in effect.

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

UNANIMOUS-CONSENT AGREEMENT—H.R. 6331

Mr. REID. Mr. President, I ask unanimous consent that upon disposition of H.R. 6304; that is, the FISA legislation, the motion to proceed to the motion to reconsider the vote by which cloture was not invoked on the motion to proceed to H.R. 6331 be agreed to, the motion to reconsider be agreed to, and the time until 4 p.m. be for debate prior to a vote on the motion to invoke cloture on the motion to proceed, with the time equally divided and controlled between the leaders or their designees; that at 4 p.m., with no intervening action or debate, the Senate proceed to vote on the motion to invoke cloture.

Before the Chair rules on my request, I would like to make a parliamentary inquiry with reference to an agreement of June 26 with respect to H.R. 6331. Am I correct that if cloture is invoked on the motion to proceed to H.R. 6331, all postcloture time is yielded back and the Senate will then vote on passage of the bill with no intervening action or debate?

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

Is there objection to the request of the majority leader? Without objection, it is so ordered.

RECOGNITION OF THE REPUBLICAN LEADER

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

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

Printed on recycled paper.

FISA AMENDMENTS

Mr. McCONNELL. Mr. President, the one point that I would like to make before we vote later this morning on the various amendments to the Foreign Intelligence Surveillance Act—a law that is aimed at helping us stop terrorists before they can hurt us—is the most important point of all. It also happens to be a fairly straightforward one: adopting any one of these three amendments would kill the underlying bill.

It would risk putting us right back where we were last July, with the August recess approaching, and the authorizations for monitoring foreign terrorist targets set to expire. In that case, if a member of al-Qaida were to call, our ability to monitor his communications would be seriously handicapped, and it may even be impossible for us to do so, at least on a real-time basis.

So the question before the Senate is really quite simple: we either pass this delicately balanced bipartisan bill which gives our intelligence officials the tools they need to find foreign terrorists overseas—which is itself a compromise on the bill the Senate already passed this year by a vote of 68–29, and which will garner a Presidential signature—or we scrap it altogether and end up right back where we were a year ago.

That is our choice. Fix the problem now—finally—or allow the problem that intelligence officials alerted us to more than a year ago continue indefinitely, regardless of the threat.

Just yesterday the White House reiterated its intention to veto any FISA bill that is amended to strip or weaken liability protection for the telecommunication companies that may have helped the Government in the wake of the September 11 attacks.

This means that the adoption of any one of these amendments will take down the entire bill, unraveling more than a year of delicate bipartisan negotiations.

We're not doing these companies any special favors. The U.S. Government wouldn't even have a foreign surveillance program without them. The intelligence community relies on their cooperation to do its job. And any law that makes it less likely that these companies cooperate with us in the future is a law that makes it harder to protect Americans from terrorist attacks.

That is not just my view or the view of Senator BOND on the Republican side. Let me remind my colleagues of what the chairman of the Intelligence Committee told us, quite bluntly, about our responsibilities in this area on the floor of the Senate last February. This is what Senator ROCKEFELLER said:

> What people have to understand around here, he said, is that the quality of the intelligence we are going to be receiving is going to be degraded. It is going to be degraded. It is already going to be degraded as telecommunications companies lose interest. Everybody tosses that around and says: Well, what do you mean? I say: Well, what are they making out of this? What is the big payoff for the telephone companies? Do they get paid a lot of money? No. They get paid nothing. What do they get for this? They get $40 billion worth of suits, grief, trashing, but they do it. But they don't have to do it, because they do have shareholders to respond to, to answer to.
>
> There is going to be a degrading of intelligence in some very crucial areas, because we will go right back to where we were last August, and that will be a further jolt to the telecommunications companies, because they will understand that you cannot count on the Congress, you cannot count on us to make policy which will give [them] stability.

Those are the words of the Democratic chairman of the Intelligence Committee. And I would only add to them that it is our job to make policy in this area. The Senate—and especially its Intelligence Committee—has been examining this issue for over a year. The committee of jurisdiction conducted extensive oversight and concluded that the telecommunications companies acted in good faith in answering the administration's call to help protect the country from terrorist attack.

The Intelligence Committee then passed an overwhelmingly bipartisan bill, 13–2, that protected these companies from potentially crippling lawsuits, which would terminate the program. The full Senate made the same policy judgment, defeating the Feingold-Dodd amendment to strike immunity 67–31, as well as the Specter-Whitehouse substitution amendment 68–30, on its way to passing the bill by a lopsided vote of 68–29.

Further modifications were made to the bill in negotiations with the House, including to the liability provisions. The House leadership—which had been holding up enactment of a FISA modernization law because of the liability question—then voted for this compromise bill, and the compromise cleared the House with almost 300 votes.

Now, after all this legislative time and effort and contemplation, the Bingaman amendment would have us say, ''Just kidding.'' This amendment would punt our oversight and legislative responsibilities over to inspectors general in the executive branch so they can look at the same program that the Intelligence Committee and the Congress have been considering for over a year.

It is ironic that those who are concerned about preserving congressional prerogatives and congressional responsibilities, especially in relation to the executive branch, would have us rely on the judgment of employees of the executive branch before we can make policy, especially after all the work that Congress has done on this subject. We should not kick the can down the road for another 15 months and in the process abdicate our role in this area.

An acceptable bipartisan solution to our intelligence problem has already been reached. That solution has been endorsed by majorities in both houses of Congress. If that solution is compromised by adopting any of these amendments, this bill would not become law, current targeting orders would expire, and the Senate would fail today to do its basic duty of protecting Americans to the fullest extent possible from terrorist attack.

Americans have a right to expect Congress to give our intelligence officials what they need to do their jobs. And the only way we fulfill that trust is by voting against each of these amendments to the FISA modernization bill.

Mr. President, before turning to another subject, I wish to particularly commend the Senator from Missouri, Mr. BOND, who has done an incredibly effective job at trying to traverse the various currents that have surrounded this extraordinarily difficult piece of legislation.

First he established a very good working relationship with Senator ROCKEFELLER, the chairman of the Intelligence Committee. He was an integral part of negotiating and, as I say, kind of dealing with the currents that were going on through the last year.

I just wish to say through the Chair to him how much America owes the Senator from Missouri for his extraordinary work on this subject. America will be safer in the future as a result of the work of the Senator from Missouri. We here in the Senate are deeply grateful for his extraordinary job, and the people of Missouri have every right to be very proud of him.

Mr. BOND. I thank the Senator.

MEMORIAL SERVICE OF SENATOR JESSE HELMS

Mr. McCONNELL. Mr. President, on one other item, yesterday we said goodbye to our former colleague, Senator Jesse Helms. A significant number of our colleagues were in attendance at the funeral in Raleigh. Since his passing was expected, we certainly did not suffer from shock. It was anticipated that our friend and colleague would soon pass away, so in many respects it was a celebration of the life of a unique and great American.

I was honored by Mrs. Helms to be asked to do one of the eulogies at the funeral yesterday. I ask that my remarks be printed in the RECORD for any of our colleagues who might want to see what I had to say on behalf of our friend and colleague yesterday as we bid him farewell.

I ask unanimous consent to have those remarks printed in the RECORD.

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

MEMORIAL SERVICE OF SENATOR JESSE HELMS

REMARKS OF U.S. SENATE REPUBLICAN LEADER MITCH MCCONNELL, JULY 8, 2008

Dot, Jane, Nancy, Charles, members of the Helms family, Mr. Vice President, Senate colleagues, Reverend Bodkin, distinguished guests, and friends of Jesse Alexander Helms.

Many good things have been said about Jesse Helms since he left us early Friday morning. And none, I think, was more true than a note that was sent to the Helms Center over the weekend. ''He was caring about those he knew and didn't know,'' it said. ''He wanted others to succeed.''

In the Senate, he always sought them out. Whether it was the schoolchildren that he met with by the thousands; the staff members he didn't call staff, but family—the Helms Senate family; or the Senate pages he would always stop to talk to, and who would send him notes later on in life to thank him for a kindness, a word of encouragement, or to show him pictures of a newborn baby.

Over the years, anyone who passed by Jesse Helms in the Capitol, or worked in his office, would remember him as one of the kindest men they ever knew. No matter who you were, he always had a thoughtful word and a gentle smile. He put duty above all else—duty to God, to country, and to family, yes—but also a duty that's often overlooked: the simple duty of treating other people well.

He never let the seriousness of his job in the Senate become an excuse for pretense.

Just ask the Senators who always had to make room for Jesse's constituents on the senators-only elevators. Or the tourists from all the other states who noticed that Senator Helms always put visitors from North Carolina at the front of the Senate subway car when he rode with them. Or the constituents who weren't even from North Carolina, but who could always count on the Helms Senate family to help if their own representatives didn't. Their boss always made sure of it.

One of the more notable features of being a member of the U.S. Senate is that you get to see how different the public image of certain well-known senators is from the men and women you actually get to know as colleagues and as friends. No one seemed to suffer more from this peculiar disconnect than Jesse Helms. And no one seemed to care about it less.

I remember walking into his office for the first time and being disarmed by his kindness, and then stepping into his private office and being disarmed again at seeing an entire wall covered with some of the nastiest political cartoons I'd ever seen. Every one was critical of Jesse. And he loved them. Visitors would come into his office, look at the wall, look back at Jesse, and he'd just smile.

There was a lesson here: you can let your adversaries beat you down, or you can let it roll off your back. Jesse taught many of us to do the latter, and we were grateful for the advice.

Staffers learned how to deal with the critics too. One time, after a particularly harsh editorial in the New York Times, a new Helms staffer dashed off a harsh response and brought it in to the boss for his review. Jesse read it, patted the young man on the shoulder, and said, ''Son, just so you understand: I don't care what the New York Times says about me.''

He had a kind of preternatural calm about what other people said. But for Jesse, standing on principle and fighting back in defense of one's views was never to be confused with animosity for ones adversaries. Political disagreements were never a reason to treat others badly. As one of his Democratic colleagues put it over the weekend: ''He was always a gentleman.''

When he fought back, he did it in the most effective way he knew how. Nobody knew the rules of the Senate better than Jesse Helms, and no one used them against his adversaries to more frustrating effect. There's a saying in Washington: Whenever a member of Congress looks into the mirror, he sees a future president. But Jesse Helms was always an exception to the rule. He never saw himself as anything other than a senator. And he played the role masterfully.

Of course, there was one person whose opinion did matter. And, as I recall, she was never one to hold back. If Jesse gave a speech that was a little too long, he'd be sure to hear about it in the car ride home. And, unlike the editorial writers, Jesse always took Dot's wise counsel to heart.

It's ironic, of course, that Jesse Helms would find his wife in a newsroom—ironic that someone who had so little use for newspapers would have started out at one. But he always remembered those early days at the News & Observer fondly. He remembered that the best path to his desk was the path that led him past Dorothy Coble's [COEBULL] desk.

He took that path often. And soon enough, he and Dot were covering the news together, and becoming close friends over late-night steak dinners at the Hollywood Café. Decades later, looking back on all the state dinners and all the visits from various dignitaries and world leaders, Jesse would say those dinners with Dot at the Hollywood Café were, for him, the most memorable.

Dot, you had the perfect partnership. We miss you in Washington. And we honor you today too, for your devotion and your strength, especially in these last years, which haven't been easy, we know.

Jesse Helms was not above sharing the secret of his success with anyone who asked.

One time, a college student who admired him called his office on a whim to see if Senator Helms would be willing to speak to a college group he ran. The boy was shocked when Senator Helms himself cut in on the phone line and said, ''I'll do it.'' But he was shocked even more when, on the day of the speech, he asked Senator Helms for the one piece of advice he'd give a young man just starting out in politics. ''Son, find yourself a good wife.''

It has been noted by many others how fitting it should be for a man who spent his entire adult life talking about the ''Miracle of America'' to pass away on Independence Day. It was no less fitting, I should think, for a man who did so much to promote the vision of the American Founding to have come from as modest a background as so many of the men who secured it in battle.

That too, of course, has always been a part of the Miracle of America: that an army of castaways, one third of whom didn't even have shoes, could defeat the British Army. That a boy from Kentucky whose father couldn't even sign his own name would go on to write the words of the Gettysburg Address. Or that a policeman's son from Monroe, North Carolina, could, in his own time, have such a powerful effect on the course of human events. Jesse Helms rose the way so many others in our country have from its earliest days, not by inheriting something, but by building something.

He was a product of the public schools, but his most important education came from the home. In the Helms household, Jesse said, it was not uncommon for him to wake up and find his mother cooking breakfast for the hobos that his father had rounded up the night before. And on Sundays, the whole family would worship together at the First Baptist Church on Main Street in Monroe.

It was the kind of home where a young boy could learn a boundless hope in the promise of America. It was the kind of place where a young boy could learn about the importance of strong principles, and the importance of fighting for them, regardless of the personal cost.

I remember once, as a young senator, walking into the Republican cloakroom, and seeing what that kind of tenacity looked like: a lone senator, sitting in the corner. Jesse had put the rest of us in some parliamentary tangle about one thing or another. He'd ground the place to a halt. And he was completely comfortable with the whole situation. It was truly something to behold.

Once, after a disastrous early battle in the Revolutionary War, John Adams was asked for an explanation. ''In general,'' he said, ''their generals outgeneralled our generals.'' For the last three decades of the 20th Century, the same would never be said of a certain North Carolina lawmaker whenever he decided to take on an issue in the U.S. Senate. Jesse Helms always held his ground.

Many others who never saw Jesse Helms on the Senate floor have noted with admiration the same qualities over these past days. One man from Florida wrote that Cuban Americans will never forget his staunch opposition to the Castro Regime. And one of Jesse's many unlikely friends on the international stage, Bono, left a tribute at the Helms Center that many men could only dream of.

''Give Dot and the family my love,'' it said. ''And tell them there are two million people alive today in Africa because Jesse Helms did the right thing.''

Today, we are sad at the passing of our friend, but we are consoled by the promises of a God he loved. Jesse Helms was once asked whether he had any ambitions beyond the Senate. ''The only thing I am running for,'' he said, ''is the Kingdom of Heaven.''

Now that day which comes to all of us has come for Jesse Helms. And we are confident that he has heard those words he longed to hear: ''Well done, good and faithful servant . . . Come and share in your Master's joy.''

The ACTING PRESIDENT pro tempore. The majority leader.

FISA

Mr. REID. Mr. President, I wanted to build upon the remarks of the Senator from Kentucky. He commended and applauded Senator BOND, and that certainly is appropriate. But I also want to recognize, as the Republican leader did, the work they have done together. I may disagree with the result of what we have on the floor today, and the outcome of what is going to happen today, but I want everyone to know that Senator ROCKEFELLER is a man who works hard. There is no Senator who works any harder than JAY ROCKEFELLER. He spends, with his counterpart and counterparts, Members of the Intelligence Committee, days, days each week in a place that is secure, away from the press, staff, and the rest of the Senate, in trying to figure out what is going on in the world as it relates to bad people trying to do bad things.

They also have to keep on top of what is going on around the world as the administration advises them. So when the history books are written about this institution, one of the people they will have to write about is the good man of West Virginia, a man of wealth who decided to be a public servant. He has done that for the people of West Virginia for decades. There are a lot of great Senators who have come from the State of West Virginia, and two of them are serving now, but I

want everyone to know that my appreciation, my affection, and my total admiration for JAY ROCKEFELLER is like no other Senator. He is a wonderful human being. I so appreciate his willingness to do this job. Not everyone runs and tries to get to be chairman of the Intelligence Committee, but he does it because he thinks it is the right thing to do for the country. We in the Democratic caucus think there is no one better to lead us in that behalf.

I will simply say that the relationships with Senator BOND and Senator ROCKEFELLER have been extremely pleasant, and that makes this most difficult job better for all of us.

RESERVATION OF LEADER TIME

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

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 procedures for authorizing certain acquisitions of foreign intelligence, and for other purposes.

Pending:

Bingaman amendment No. 5066, 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.

Specter amendment No. 5059, 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.

Dodd amendment No. 5064, to strike title II.

The ACTING PRESIDENT pro tempore. Who yields time?

The Senator from Missouri is recognized.

Mr. BOND. Mr. President, I ask unanimous consent to speak on my time, followed immediately by Senator HATCH, who will speak for 10 minutes, and that my remaining time be reserved after that.

The ACTING PRESIDENT pro tempore. Is there objection?

Mr. REID. What was the request?

Mr. BOND. The request was that I speak on my time and that Senator HATCH be given 10 minutes.

Mr. REID. Mr. President, is that additional time to what we have?

Mr. BOND. No. That is off of my time.

Mr. REID. I appreciate that. But should we not be going back and forth? Because Senator FEINGOLD has been here waiting.

Mr. BOND. How long will Senator FEINGOLD speak?

Mr. REID. My understanding is 30 minutes.

Mr. BOND. Responding to the distinguished leader, Senator HATCH had to leave a Judiciary Committee hearing. He was only going to speak 10 minutes. And I am going to be about 10 minutes.

Mr. FEINGOLD. As long as my 30 minutes is blocked.

The ACTING PRESIDENT pro tempore. The Senator's time is locked in under the unanimous consent.

Is there objection to the sequence of speakers?

Mr. FEINGOLD. As long as my 30 minutes is reserved so I can speak following the time of the Senator from Utah.

The ACTING PRESIDENT pro tempore. Is there objection to the request as modified?

Without objection, it is so ordered.

The Senator from Missouri.

Mr. BOND. Mr. President, I thank the distinguished leader who has done a remarkable job of helping us to get to this point in what has been, let us say, a challenging 15-month debate. And I concur with him in the very kind and generous words he said about my friend and colleague, the chairman of the committee, Senator ROCKEFELLER.

I expressed my appreciation to the Republican leader for his very kind words, and I agree with him that it is absolutely essential that we defeat these amendments today. But, finally, after sporadic filibuster attempts over a period of 15 months by several Members, Members whom I respect for their tenacity and conviction in this matter, we are poised today to conclude work on the FISA Amendments Act of 2008.

Yesterday I detailed my views on aspects of this legislation, and I walked through six tweaks to the legislation that were made to the bipartisan Senate bill that the Senate passed in February, earlier this year, that have resulted in the bill before us today.

I am happy that the tweaks to the bill did not change the bill much. I am proud to negotiate with the House to bring back to the Senate essentially the same bipartisan bill today that both the chairman and I crafted with the help of an overwhelming bipartisan majority of our Intelligence Committee.

This ensured that today we have a major bipartisan victory of which all sides can be proud, exemplifying what can be accomplished in Washington when there is bipartisan negotiation.

I thank all of those who worked so hard to bring us to the cusp of sending this legislation to the President. I appreciate the hard work of House Majority Leader STENY HOYER, who was critical in the House; Republican Whip ROY BLUNT, and Congressmen PETE HOEKSTRA and LAMAR SMITH, as well as the efforts of my colleagues in the Senate, Senators ORRIN HATCH, SAXBY CHAMBLISS, Senate Republican Leader MITCH MCCONNELL, and Chairman ROCKEFELLER for his strong support and leadership.

Further, we could not be here today without the hard work of staff, from the House, Jen Stewart from House Minority Leader BOEHNER's office; Brian Diffel from House Minority Whip BLUNT's office; Chris Donesa from Mr. HOEKSTRA's office; Caroline Lynch from Mr. SMITH's office; Mariah Sixkiller with the House Majority Leader's office; and Jeremy Bash from Mr. REYES' office, along with an assortment and large number of deputies and others who assisted them in producing the language that their Members would support.

As to my own staff, I thank my staff director Louis Tucker and staffer Jacqui Russell from the Intelligence Committee; a very special thanks to two FISA counsels, Jack Livingston and Kathleen Rice, who brought invaluable expertise into this process as lawyers who participated in the FISA process from the executive branch perspective while working in the FBI.

Thanks to Senator ROCKEFELLER's counsels, Mike Davidson, Christine Healey, and Alissa Starzak, as well as to Jesse Baker with Senator HATCH; to Tom Hawkins and John Abegg with Leader MCCONNELL's office; and to the many other staff who helped make this happen, too many to name now in the short time we have before we vote on the upcoming amendments.

I believe it is necessary to reinforce a few points that Senator ROCKEFELLER and I made yesterday in urging our colleagues to defeat the three amendments before us that would kill this bill by altering the title II liability protections, and potentially putting us in the disastrous situation we faced a year ago.

First, yesterday we heard from supporters of these amendments that decimating the title II civil liability protections for our telecommunications providers would have no effect on the title I portion of the bill that modernizes FISA collection methodologies because title I contains directives that are enforceable by court order.

Such statements demonstrate a lack of understanding about the intelligence community's dependence upon our third-party partners. We know from our experience when the Protect America Act expired in February that is simply not the case. We lost days' worth of intelligence while the partners ceased cooperating momentarily until they were assured that authorizations and corresponding immunity tie would last until August. If we do not have their voluntary cooperation by giving them liability protection, then it is much harder and we get much less in trying to compel them.

Second, we heard yesterday that it is ''bad lawyering'' to apply the substantial evidence standard to the title II liability. The Senate's bill had an abuse of discretion standard for title II liability, which I believe was the appropriate standard, but House Democrats offered this other standard.

It is an appellate standard, not a factual standard, as my colleague from

Rhode Island asserted yesterday. The court will not be holding a trial or hearing from witnesses. There is no adversarial process in the true sense of the word. These steps and safeguards are necessary to ensure that our intelligence sources and methods remain protected.

Third, while my colleague from Rhode Island asserted that the TSP is a cause for deep anger at the administration, I submit that deep anger should be redirected away from tearing down experienced, dedicated American officials and toward tearing down our foreign enemies who are intent on destroying our Nation and our way of life.

The TSP enabled our intelligence community to prevent further attacks on our homeland, and I and the leaders of the intelligence community believe it is the key reason why we have not been attacked for nearly 7 years since September 11.

Despite what some far-left editorial writers say, the TSP only allowed warrantless interception of phone calls from terrorists reasonably believed to be overseas.

Intercepts of Americans and other U.S. persons in the United States required a warrant from the FISA Court.

To suggest yesterday, as was suggested on the floor, that it enabled collection of communications among innocent American citizens is flat wrong. The bill before us will keep us safe and protect civil liberties. So it should not be a moment of anger but, rather, one of bipartisanship and pride that we worked together to produce the best legislation possible to keep America safe and to protect her rights further.

Others assert that leaking the program was good. Well, I dispute that. The intelligence agencies noticed a significant drop in collection when the terrorists found out we could listen in on them. The CIA Director, at his confirmation hearing, when I asked him how badly the intelligence community had been hurt, said: We are applying the Darwinian theory to terrorists; we are only intercepting the dumb ones.

Both Democratic and Republican leaders were read in on this program early on, the Big Eight, and had the opportunity through congressional options to delay or scrutinize the program, if necessary.

I understand they advised the administration it would take too long to go through the legislative process to modernize FISA. From what I have seen over the past 15 months in how long it has taken us to get here today, that seems to have been very good advice.

My colleague from Pennsylvania asserted earlier that only 30 Senators have been read in. But the chairman did a little quick math and said 37 have been read in. It is unusual to have more than one-third of the Senate briefed on some of our most sensitive intelligence collection strategy.

Oversight of these areas is why the Senate created the Senate Select Committee on Intelligence. We on the committee oversee hundreds of programs that the rest of our colleagues know little about. And even though we invite them over for briefings, they usually have too many other responsibilities to have time to accept our invitation.

Finally, my colleague from Pennsylvania asserted we do not know what we are granting immunity for, and only courts can decide that matter. That is simply not true. The committee's bipartisan review makes it clear to whom retroactive civil liability protection is being granted. And the courts are not the appropriate standard to make those judgments.

The Senator's statements clearly indicated that he wants to challenge the Government, the President's use of the TSP. Well, we do not block suits against the Government, against Government employees or officials. It would be unfair and potentially disastrous to use the patriotic electronic carriers as punching bags to try to get at the administration. That will destroy our intelligence community's ability to collect with their assistance, and it would potentially lead to a serious gap in the program. It would put the people of the collecting agencies at great risk, civilians who do not go into battle with protection, with gear and with training.

That is an absolutely outrageous assertion that they should be willing to undergo the hazards of war in matters of national security. It is appropriate and imperative that the oversight committees act as they have in reporting such legislation to the entire body.

My friend repeatedly inquired if Congress had ever done anything such as this before. But, in fact, we only need to look back to 2005 when Congress passed the Protection of Lawful Commerce in Arms Act. It essentially granted immunity to gun manufacturers, distributors, dealers, and others against lawsuits seeking money damages and other relief for harm caused by misuse of firearms.

It still allowed those defendants to be sued for their own negligence, violation of sale and marketing statute, breach of contract or warranty, design defect, et cetera. The immunity provision was held to be constitutional, not a violation of due process, equal protection, or takings, in Ileto v. Glock, a 2006 California court case. So beyond the rhetoric in opposition to the legislation before us, I believe Senators need to take a fair look at what is before us today.

I strongly encourage my colleagues to vote down the three amendments before us and to support this bill. This bill gives our intelligence operators and law enforcement officials the tools they need to conduct surveillance on foreign terrorists in foreign countries planning to conduct attacks inside the United States against our troops and allies. It is the balance we need to protect our civil liberties without handcuffing intelligence professionals. Let's do the right thing, pass this bill without amendments.

I yield the floor.

The ACTING PRESIDENT pro tempore. The Senator from Utah.

Mr. HATCH. Mr. President, it was Kierkegaard, a number of years ago, who said that venture causes anxiety, but not to venture is to lose one's self.

From the outset let me be crystal clear in voicing my strong opposition to all three pending amendments to H.R. 6304. But before I discuss these amendments, let me address a few things said on this floor yesterday. One of my colleagues said the Congress shouldn't ''jam this bill through.'' If working on a bill for over 440 days is jamming it through, then Webster's dictionary should prepare a new definition for the word. We also heard comments yesterday which were critical of the fact that not every Senator has been fully briefed on the activities of the intelligence community. I guess since this same argument didn't stick the first time it was offered back in December, more desperate attempts would be made. If at first you don't succeed, try, try again.

Memories are short around here, and we should appreciate that the very creation of the Intelligence Committee was controversial. The committee was created so a limited number of Members would have oversight of our intelligence agencies. During the 10 days of debate on the resolution creating this committee, numerous Senators openly worried about possible leaks in providing highly classified material to a large number of individuals. Here is what Senator Milton Young said in May of 1976:

> It is my understanding that on this new committee, staff would have access to the most sensitive information. Human nature is such that when too many people have access to this information, someone is bound to leak parts of it to an ambitious and inquisitive press.

Also, in 1976, here is what another Senator said. This is Senator Walter Mondale on the need for a Senate Intelligence Committee on May 13, 1976:

> We have the worst possible system for congressional oversight of intelligence. Responsibility and authority are fragmented in several cases; it is impossible to look at intelligence as a whole; because authority and responsibility are not welded together, we are incapable of dealing with problems privately, and there is the inevitable temptation to deal with them through leaks.

Thirty two years later, these statements contain points that are still vitally important to this discussion. Is this the system of oversight that we should go back to? Those that argue that we should not vote until every Member gets some sort of vague access are essentially saying that all 535 Members of Congress, plus hundreds of cleared staff, should be read into all highly classified programs whose jurisdiction is otherwise limited to the Intelligence Committees. If you want to guarantee future leaks, this would be a good approach.

This sort of logic begs the question: Why do we have the Intelligence Committee? The answer is obvious, and I urge my colleagues to remember the extensive efforts of our predecessors which created a committee with the authority to review these materials.

While the issue of civil liability protection for telecoms has been debated extensively over the last 9 months, the three final amendments before us all attempt to alter or remove the carefully crafted bipartisan civil liability provision. I agree with the comments from both sides of the aisle in opposition to these amendments.

The Bingaman amendment, for example, would needlessly delay the liability provision. I believe the amendment is unwise, as its purpose disregards the extensive work that Congress has already conducted on this issue. By my last count, Congress has conducted over 27 hearings on the TSP and FISA over the last few years.

Let there be no doubt; the IG review will not, and cannot, determine the legality of the terrorist surveillance program. Any suggestion that the review will do so is absolutely incorrect. Inspectors general are not qualified and lack jurisdiction to review the legality of intelligence programs. As further evidence of this obvious point, let's look at this quote by the DOJ inspector general on conducting legal analysis:

That's not our role as the Inspector General.

In addition, the IG review will not publicly reveal which companies elected to participate in this program, as that information remains highly classified. Simply put, attempts to alter the FISA compromise based on a misperception of the eventual IG review should be strongly rejected, and we should do so this morning.

Close inspection of the lawsuits against the telecoms reveals quite dubious claims. As has previously been stated, the plaintiffs persistently confuse speculative allegations and untested assertions for established facts.

It is very simple, Congress should not condone oversight through litigation.

The lawsuits seize on the President's brief comments about the existence of a limited program to go on a fishing expedition of NSA activities. But this is really worse than a fishing expedition; this is draining the Loch Ness to find a monster. Sometimes what you are looking for just doesn't exist.

Yet we consistently hear as justification for the apparent paranoia that some wiretaps were warrantless. But lest we forget, the fourth amendment does not proscribe warrantless searches, it proscribes unreasonable searches.

Here's a quick example from a few blocks from here: Waiting for warrantless searches at the National Archives; waiting to be served before viewing the fourth amendment itself. That is a warrantless search.

The fact is that the President created an early warning system to prevent future attacks; essentially a terrorist smoke detector. But rather than appreciate the protection it offered, critics rushed to pull out the batteries so that it could not work.

My feelings of admiration and respect for the companies who did their part to defend America are well known. As I have said in the past, any company who assisted us following the attacks of 9/11 deserves a round of applause and a helping hand, not a slap in the face and a kick to the gut.

When companies are asked to assist the intelligence community based on a program authorized by the President himself and based on assurances from the highest levels of government that the program has been determined to be lawful, they should be able to rely on those representations.

In the over 40 outstanding civil lawsuits, is there any proof that any litigant was specifically targeted by the government? Can any of the plaintiffs show that they are ''aggrieved persons'' under the definition of FISA? The answer to both questions is no. Rather, many of the lawsuits utilize the following logic: I have long distance service, so I am going to sue because I think you listened to my calls. Even though they have no proof; even though the government has more important things to do than listen to their random phone calls, they push on in their desire to justify their view of self-importance and irrational belief in government conspiracy. I don't want to bruise anyone's ego, but if al-Qaida is not on your speed dial the government is probably not interested in you.

The possible disclosure of classified materials from ongoing court proceedings is a grave threat to national security, and the very point of these lawsuits is to prove plaintiffs' claims by disclosing such classified information. Simply put, you do not tell your enemies how you track them. This is why the NSA and other government agencies will not say what they do, how they do it, or who they watch. Nor should they. To confirm or deny any of these activities, which are at the heart of the civil lawsuits, would harm national security. We should not discuss what our capabilities are.

If the identities of the companies are revealed and officially confirmed through litigation, they will face irreversible harm; harm in their business relations with foreign governments and companies, and possible physical harm to their employees both here and abroad, who are truly soft targets for attackers.

I have come to this floor on numerous occasions during the last year to discuss the issue of FISA modernization and am hopeful that the need to continue to do so will finally end tomorrow. I am confident that when the Congress considers this issue, we will finally send this vitally important legislation to the President to be signed into law.

I compliment the distinguished chairman and vice chairman of the committee, Senators ROCKEFELLER and BOND. They have had to handle this matter through all kinds of vicissitudes and false logic. They have done an exceptionally good job. They and their staff have stood and tried to let America know what is involved.

The fact is, these two leaders have done a great job on this committee. They have previously passed bipartisan legislation overwhelmingly. This original Senate FISA modernization bill would have passed the House pretty much overwhelmingly, had it been brought up, and, of course, hopefully this version will be passed today without any of these three amendments which would cause a veto.

I thank those who vote for this bill and those who have been considerate enough to look at all the important arguments and support this legislation which is much needed, certainly much needed before August and should have been passed a long time ago.

I thank all those who have stood up on this bill.

I yield the floor.

The ACTING PRESIDENT pro tempore. The Senator from Wisconsin.

Mr. FEINGOLD. Mr. President, I ask unanimous consent that Senator LEAHY be recognized following my remarks, to be followed by Senator SPECTER for 10 minutes.

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

Mr. FEINGOLD. Mr. President, I yield myself such time as I may consume. Before I get into my formal remarks, let me react a bit to the remarks of the Senator from Utah. He is a great colleague, a very cordial man. I have enjoyed the 16 years I have served with him, especially on the Judiciary Committee. But I will use an unsenatorial word for one of the arguments he made. The word is ''wow.'' The notion that roughly 70 Senators would not be briefed on something we are voting on and the notion that the briefing of the Intelligence Committee, which, of course, I am a member of and which I support, is a justification for having 70 Senators not knowing what they are voting on is a very bizarre interpretation of why the Intelligence Committee was created. It was not created as a replacement for the Senate when it comes to voting on the laws governing the fundamental rights of the American people. If that is the best they can come up with, when 70 Senators don't even know the fundamentals of the program that this immunity issue is addressing, it is incredible. Let me get into the merits, but first I should also address that we have apparently been lumped in as part of the black helicopter crowd. I assure you the coalition in this country that has concerns about this bill is much broader than any such characterization.

A number of Senators came to the floor prior to the Fourth of July recess to debate the FISA legislation, and more debate has occurred this week.

We heard arguments for and against this legislation, and Senators have cited a variety of reasons for their positions.

Several have defended the bill by arguing the legislation includes improvements compared to the Senate bill we passed earlier this year. Of course, I was not surprised to hear that line of argument. I agree, there are some improvements to the Senate bill contained in the legislation we are now considering. But Mr. President, those changes, as you well know, are not nearly enough to justify supporting the bill, as I will explain in a few moments.

I was, however, surprised to hear several Senators still defending the legality of the President's warrantless wiretapping program and still arguing that Congress had somehow signed off on this program years ago because the so-called Gang of 8 group was notified.

I thought we were well past these arguments. Two and a half years after this illegal program became public, I cannot believe we are still debating the legality of this program on the Senate floor and that anyone—anyone—seriously believes that merely notifying the Gang of 8—eight Senators and Congressmen—while keeping the full Intelligence Committees in the dark, somehow represents congressional approval.

It could not be clearer that this program broke the law and that this President—this President—broke the law. Not only that, but this administration affirmatively misled the Congress and the American people about it for years before it finally became public. So if we are going to go back and discuss these issues that I thought had long since been put to rest, let's take a few minutes to cover the full history.

Here is the part of this story that somehow seems to have been forgotten. In January 2005, 11 months before the New York Times broke the story of the illegal wiretapping program, I asked then-White House Counsel Alberto Gonzales at his confirmation hearing to be Attorney General whether the President had the power to authorize warrantless wiretaps in violation of the criminal law. Neither I nor the vast majority of my colleagues knew it then, but the President had authorized the NSA program 3 years before, and Mr. Gonzales was directly involved in that issue as White House Counsel.

At his confirmation hearing, he first tried to dismiss my question—if you can believe it—as ''hypothetical,'' though he knew exactly what was going on. He then testified:

> [I]t's not the policy or the agenda of this President to authorize actions that would be in contravention of our criminal statutes.

The President's wiretapping program was in direct contravention of our criminal statutes. Mr. Gonzales knew that, but he wanted the Senate and the American people to think the President had not acted on the extreme legal theory that the President has the power as Commander in Chief to disobey the criminal laws of this country.

The President, too, misled the Congress and the American public. In 2004 and 2005, when Congress was considering the reauthorization of the USA PATRIOT Act, the President went out of his way—I remember this very clearly—to assure us that his administration was getting court orders for wiretaps, all the while knowing full well that his warrantless wiretapping program was ongoing.

Here is what the President said on April 20, 2004:

> Now, by the way, any time you hear the United States government talking about [a] wiretap, it requires—a wiretap requires a court order. Nothing has changed, by the way. When we're talking about chasing down terrorists, we're talking about getting a court order before we do so.

Those are the words of the President of the United States to the American people.

Again, on July 14, 2004:

> The government can't move on wiretaps or roving wiretaps without getting a court order.

And listen to what the President said on June 9, 2005:

> Law enforcement officers need a federal judge's permission to wiretap a foreign terrorist's phone, a federal judge's permission to track his calls, or a federal judge's permission to search his property. Officers must meet strict standards to use any of these tools. And these standards are fully consistent with the Constitution of the U.S.

So please, let's not pretend that the highly classified notification to the Gang of 8, delivered while the President himself was repeatedly presenting a completely different picture to the public, suggests that Congress somehow acquiesced to this program. As the Members of this body well know, several Members of the Gang of 8 at the time raised concerns when they were told about this, and several have since said they were not told the full story. And, of course, all of them—all of them—were instructed not to share what they had learned with a single other person.

I also cannot leave unanswered the arguments mounted in defense of the legality of the NSA program. I will not spend much time on the argument that the authorization for use of military force that Congress passed on September 18, 2001, authorized this program. That argument has been thoroughly discredited. In the AUMF, Congress authorized the President to use military force against those who attacked us on 9/11, a necessary and justified response to the attacks. We did not authorize the President to wiretap American citizens on American soil without going through the judicial process that was set up nearly three decades ago precisely to facilitate the domestic surveillance of spies and terrorists.

Senators have also dragged out the same old, tired arguments about the President's supposed inherent Executive authority to violate the FISA statute. They argue that a law passed by Congress cannot trump the President's power under the Constitution. Now, that argument may sound good, but it assumes what it is trying to prove—that the Constitution gives the President the power to authorize warrantless wiretaps in certain cases. You cannot simply say that any claim of Executive power prevails over a statute—at least, not if you are serious about the rule of law and about how to interpret the Constitution.

The real question is, when a claim of Executive power and a statute arguably conflict, how do you resolve that conflict?

Fortunately, this is not something the Supreme Court has been silent about. The Supreme Court has told us how to answer that question. We are talking about the President acting in direct violation of a criminal statute. That means his power was, as Justice Jackson said in his famous and influential concurrence in the Steel Seizure cases half a century ago, ''at its lowest ebb.'' The Presidential power, Justice Jackson said, in that circumstance was ''at its lowest ebb.'' In other words, when a President argues that he has the power to violate a specific law, he is on shaky ground.

That is, obviously, not just my opinion. It is what the Supreme Court has made clear. No less an authority than the current Chief Justice of the United States, John Roberts, repeatedly recognized in his confirmation hearings—over and over again—that Justice Jackson's three-part test is the appropriate framework for analyzing questions of Executive power.

In early 2006, a distinguished group of law professors and former executive branch officials wrote a letter pointing out that ''every time''—every time—''the Supreme Court has confronted a statute limiting the Commander-in-Chief's authority, it has upheld the statute.'' It has upheld the act of Congress over the claims of Executive power that overreach and conflict with the power of this Congress to make the laws in this country.

The Senate reports issued when FISA was enacted confirm the understanding that FISA overrode any preexisting inherent authority of the President. The 1978 Senate Judiciary Committee report stated that FISA ''recognizes no inherent power of the President in this area'' and ''Congress has declared that this statute, not any claimed Presidential power, controls.''

Contrary to what has been said on this floor, no court has ever approved warrantless surveillance in violation of FISA based on some theory of article II authority. The Truong case that is so often hauled out to make this argument was a Vietnam-era case based on surveillance that occurred before FISA was enacted, so it could not have decided this issue. And the issue before the FISA Court of Review in 2002 had nothing to do with inherent Presidential authorities. Yet these cases are repeatedly cited by supporters of the President, complete with large charts

of the supposedly relevant quotations. But the fact is, not a single court—not the Supreme Court or any other court—has considered whether, after FISA was enacted, the President nonetheless somehow has the authority to bypass it and authorize warrantless wiretaps.

In fact, as the Senator from Pennsylvania and I discussed on the Senate floor yesterday, just last week a Federal district court strongly indicated that were it to reach that issue, it would find that the President must in fact follow FISA. The court was considering whether the state secrets privilege applies to claims brought under the FISA civil liability provisions, and it found that it does not. Its reasoning was based on the conclusion, again, that Congress had spoken clearly that it intended FISA and the criminal wiretap laws to be the exclusive means—the exclusive means—by which electronic surveillance is conducted, and it fully occupied the field in this area, replacing any otherwise applicable common law.

Now, here is what the court said:

> 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 another court, a district court in Michigan, has also held that the President's wiretapping program was unconstitutional, although that decision was reversed on procedural grounds by the Sixth Circuit. So to the extent there is any case law that actually addresses this issue, it totally undercuts the administration's arguments. And, of course, it certainly does nothing to support those arguments.

We have also heard that past American Presidents have cited Executive authority to order warrantless surveillance. But, of course, those past Presidents—Presidents Wilson and Roosevelt are often cited—were acting before the Supreme Court decided in 1967 that our communications are protected by the Fourth Amendment and before Congress decided in 1978 that the executive branch can no longer unilaterally decide which Americans to wiretap. So those examples are simply not relevant to this debate.

In sum, the arguments that the President has inherent Executive authority to violate the law are baseless. It is not even a close case. And the repeated efforts in the Senate to pretend otherwise are very discouraging.

It may seem that I am going over ancient history because this program is no longer operating outside the law. But this is directly relevant to the current debate. The bill the Senate is considering would actually grant retroactive immunity to any companies that cooperated with a blatantly illegal program that went on for more than 5 years and about which the administration repeatedly misled Congress.

So if Congress short-circuits these lawsuits, we will have lost a prime opportunity to finally achieve accountability for these many years of lawbreaking. That is why the administration has been fighting so hard for this immunity. It knows that the cases that have been brought directly against the Government face much more difficult procedural barriers and are unlikely to result in rulings on the merits that would allow us to get to this direct question of the legality of the President's warrantless wiretapping program.

These lawsuits involving the telephone companies may be the last chance to obtain a judicial ruling on the lawfulness of the warrantless wiretapping program. It is bad enough that Congress abdicated its responsibility to hold the President accountable for breaking the law. Now it is trying to absolve those who allegedly participated in his lawlessness. This body should be condemning this administration for its lawbreaking—not letting the companies that allegedly cooperated off the hook.

This body certainly should not grant the Government new, overexpansive surveillance authorities, which brings me now to the part of the bill that in some ways concerns me even more than the immunity provision. Let me explain why I am so concerned about the new surveillance powers granted in this bill and why the modest improvements made to this part of the bill do not even come close to going far enough.

First, the FISA Amendments Act would authorize the Government to collect all—all—communications between the United States and the rest of the world. Now, that could mean millions upon millions of communications between innocent Americans and their friends, families, or business associates overseas could be legally collected. Parents calling their kids studying abroad, e-mails to friends serving in Iraq—all these communications could be collected, with absolutely no suspicion of any wrongdoing at all, under this legislation.

Second, like the earlier Senate version, this bill fails to effectively prohibit a practice known as reverse targeting; namely, wiretapping a person overseas when what the Government is really interested in doing is listening to an American here at home with whom the foreigner is communicating. This bill does have a provision that purports to address this issue. It prohibits intentionally targeting a person outside the United States without an individualized court order if ''the purpose'' is to target someone reasonably believed to be in the United States.

But this does not do the job. At best, this prevents the Government from targeting a person overseas as a complete pretext for getting information on someone in the United States. But this language would allow a lot more. The language would permit intentional and possibly unconstitutional warrantless surveillance of an American so long as the Government has any interest—any interest at all—no matter how small, in the person overseas with whom the American is communicating. The bill does not include language that had the support of the House and the vast majority of the Senate's Democratic caucus that would have required the Government to obtain a court order whenever a significant purpose of the surveillance was to acquire the communications of an American in the United States. The administration's refusal to accept that reasonable restriction on its power is quite telling.

Third, the bill before us imposes no meaningful consequences if the Government initiates surveillance using procedures that have not been approved by the FISA Court, and the FISA Court later finds that those procedures were unlawful. Say, for example, the FISA Court determines that the procedures were not even reasonably designed to wiretap foreigners outside the United States rather than Americans at home. Under this bill, all that illegally obtained information on Americans can be retained and used. Once again, as seems to recur over and over again in this sordid tale, there are no consequences for illegal behavior by the Government of the United States. That is just wrong.

Unlike the Senate bill, this new bill does generally provide for FISA Court review of surveillance procedures before surveillance begins, and that is one of the changes that has been touted by supporters of the bill. But the bill also says if the Attorney General and the Director of National Intelligence certify they don't have time to get a court order, and that intelligence important to national security may be lost or not timely acquired, then they can go forward without traditional approval. This is a far cry from allowing an exception to FISA Court review in a true emergency because, arguably, all intelligence is important to national security and any delay at all might cause some intelligence to be lost. So I am concerned that this so-called ''exigency'' exception could very well swallow the rule and undermine any presumption at all of prior judicial approval. That could result in no prior court review. No prior judicial review. Let's just trust an administration—including this administration—rather than having the checks and balances that clearly the Founders of our country understood to be central in any situation such as this.

Fourth, this bill doesn't protect the privacy of Americans whose communications will be collected in vast new quantities. The administration's mantra has been: Don't worry, we have minimization procedures. But minimization procedures are nothing more

than unchecked executive branch decisions about what information on Americans constitutes ''foreign intelligence.'' That is why on the Senate floor I joined with Senator WEBB and Senator TESTER earlier this year to offer an amendment to provide real protections for the privacy of Americans, while also giving the Government the flexibility that it needs to wiretap terrorists overseas.

This bill relies solely on inadequate minimization procedures to protect innocent Americans, and they are simply not enough.

As I said at the outset, some supporters of this bill have pointed to improvements made since the Senate passed the bill earlier this year. I appreciate that some changes have been made, but those changes are either inadequate or they do not go to the core privacy issues raised by this bill. In fact, as the distinguished Senator from Missouri, the vice chairman of the Senate Intelligence Committee, said just yesterday, the bill before us is ''basically the Senate bill all over again'' with only ''cosmetic fixes.'' That is what the Republican vice chairman of the committee said. Any Democrat who suggests that this is somehow a big change, I don't think they read the bill, because it doesn't do the job.

For example, I am pleased the bill provides for FISA Court review of targeting minimization procedures, but as I mentioned, there is a potentially gaping loophole allowing the executive branch to go forward with surveillance without court review—an exception that could swallow the rule. The bill also now explicitly directs the FISA Court to consider whether the Government's procedures comply with the fourth amendment, but that is an authority it should have had anyway.

The bill includes an inspector general review of the illegal program, which is a positive change, but that doesn't make up for the lawsuits that are going to be dismissed as a result of this legislation. I strongly support the strengthened exclusivity language which, perhaps, may defer a future administration from engaging in lawless behavior, but let's not lose sight of the fact that FISA, as originally enacted, clearly stated already that it and the criminal wiretap laws were the exclusive means for conducting electronic surveillance. This was confirmed in the strongest terms possible by a Federal district court just last week.

The idea that we would simply trust this administration, especially, to follow this exclusivity language when they have taken such a dismissive attitude with respect to the current exclusivity language is absurd. Only under the unprecedented legal theories of this administration could that clear language be ignored, requiring Congress to pass language that effectively says: No, we really mean it. If this bill is enacted, I am by no means reassured that this administration, which repeatedly broke the law and misled the public over the past 7 years, will now respect the exclusivity of FISA.

Now, the bill does contain a key protection for Americans traveling overseas. It says if the Government wants to intentionally target Americans while they are outside of the country, it has to get an individualized FISA Court order based on probable cause. That is a great victory, and it is one we should be proud of, but it does not override the greatly expanded authorities in this bill to collect other types of communications involving Americans.

In sum, these improvements are obviously not enough. They are nowhere close. So I must strongly oppose this bill.

When you consider how we got here, this legislation is particularly discouraging. We discovered in late 2005 that the President had authorized an illegal program in blatant violation of a statute and that Congress and the public had been misled in a variety of ways leading up to this public revelation. Congress, to its credit, held hearings on the program, but was largely stonewalled by the administration for many months until the administration grudgingly agreed to brief the intelligence committees and, more recently, the judiciary committees. Nonetheless, the vast majority in the House and Senate have never been told what happened. In 2006, when the Republicans tried to push through legislation to grant massive new surveillance authority to the executive branch, we stopped it. But now, in a Democratic-controlled Congress not only did we pass the Protect America Act, but we are now about to extend for more than 4 years these expansive surveillance powers, and we are about to grant immunity to companies that are alleged to have participated in the administration's lawlessness.

I sit on the Intelligence and Judiciary Committees. I am one of the few Members of this body who has been fully briefed on the warrantless wiretapping program. Based on what I know, I can promise that if more information is declassified about the program in the future, as is likely to happen either due to the inspectors general report, the election of a new President, or simply the passage of time, Members of this body will regret that we passed this legislation. I am also familiar with the collection activities that have been conducted under the Protect America Act and will continue under this bill. I invite any of my colleagues who wish to know more about these activities to come speak to me in a classified setting. Publicly, all I can say is that I have serious concerns about how those activities may have impacted the civil liberties of all Americans. If we grant these new powers to the Government and the effects become known to the American people, we will realize what a mistake it was. Of that, I am sure.

So I hope my colleagues will think long and hard about their votes on this bill and consider how they and their constituents will feel about this vote 5, 10, or 20 years from now. I am confident that history will not judge this Senate kindly if it endorses this tragic retreat from the principles that have governed government conduct in this sensitive area for 30 years. I urge my colleagues to stand up for the rule of law and defeat this bill.

I reserve the remainder of my time.

The ACTING PRESIDENT pro tempore. The Senator from Vermont is recognized.

Mr. LEAHY. Mr. President, I applaud the Senator from Wisconsin for his statement. I concur with it.

The Senate has before it three amendments to bring accountability to this legislation: the Dodd-Feingold-Leahy amendment, the Specter amendment, and the Bingaman alternative. I intend to vote in favor of each of these three amendments.

As I noted at the outset of this debate and consistently throughout the course of Senate consideration of these matters, I oppose legislation that does not provide accountability for the 6 years of illegal, warrantless wiretapping initiated and approved by the Bush-Cheney administration. The bill, if it is adopted without amendments, seems intended to result in the dismissal of ongoing cases against the telecommunications carriers that participated in the warrantless wiretapping program without allowing a court ever to review whether the program itself was legal. None of us are out to punish the telecommunications carriers, but we worry if anybody is going to be held accountable. As it is now, the bill would have the effect of ensuring that this administration is never called to answer for its actions and never held accountable in a court of law. I do not support a result that says the President of the United States, whomever he or she is, is above the law and, therefore, I would not support the bill unless it is amended.

It is now almost 7 years since this President began efforts to circumvent the law. In violation of the provisions of the governing statute, the Foreign Intelligence Surveillance Act, this President and his administration engaged in a program of warrantless wiretapping. I believe that conduct was illegal. In running its program of warrantless surveillance, the administration relied on ends-oriented legal opinions prepared in secret and shown only to a tiny group of like-minded officials.

Basically, the administration said: This is what we want for legal advice, now give it to us. This is what we want to do to step outside the law; now you go tell us we can do that. As chairman of the Senate Judiciary Committee, of course I oppose that.

A former head of the Justice Department's Office of Legal Counsel described this program as a ''legal mess.'' This administration wants to make sure that no court ever reviews that

legal mess. The bill before us seems to guarantee they get their wish.

As Senator SPECTER and I have both confirmed during the course of this debate, the administration worked hard to ensure that Congress could not effectively review the legality of the program. Since the existence of this program became known through the press, the Judiciary Committee repeatedly tried to obtain access to the information its members needed to evaluate the administration's legal arguments. Indeed, Senator SPECTER, when he was chairman of the Judiciary Committee, prepared subpoenas for the telecommunications carriers to obtain information, simply because the administration would not tell us directly what it had done, but those subpoenas were never issued; Vice President CHENEY intervened to undercut Senator SPECTER and prevent the committee from voting on them.

There are public reports that at least one telecommunications carrier refused to comply with the administration's request to cooperate with the warrantless wiretapping. Surely that objection raised a red flag for all involved. It is clear that the administration did not want the Senate to evaluate the evidence and draw its own conclusions. Again, it sought to avoid accountability.

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, and allow for the administration to avoid accountability. 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. So 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.

So what if Americans' rights were violated. So what if laws were violated. This bill makes the Federal courts the handmaiden to a coverup. That is wrong.

Make no mistake. If title II becomes law, we would take away the only avenue for Americans to seek redress for harms to their privacy and their liberties, and there will likely be no judicial review of this administration's illegal actions. Those who claim that American citizens can still pursue their privacy claims against Government, they know that sovereign immunity is a roadblock. They know that cases against Government have been dismissed for lack of standing. They know about the Government's ability to assert the state secrets doctrine. They know the Michigan case that held the President's warrantless wiretapping program illegal was later vacated on appeal for lack of standing. Indeed, for all of the talk about holding the Government accountable, they have chosen to do nothing to make any case against the Government more viable. This is a red herring if ever there was one. We are telling Americans we are closing the door. We are telling Americans—law-abiding, honest, good, hard-working Americans—that we are closing the courthouse door in their face because we have to protect the President and those around him who may have done something illegal.

Last week, a Federal judge in San Francisco ruled that FISA's provisions trump the state secrets privilege. But that same judge was constrained to hold that plaintiffs still must prove that they are ''aggrieved'' under FISA to maintain standing to sue the Government. It is not at all clear whether these plaintiffs, or any others, can make this showing. Absent congressional action to facilitate judgments on the merits, these cases against the Government are unlikely to survive.

The report of the Senate Committee on Intelligence in connection with its earlier version of the bill that also included retroactive immunity is telling. The committee 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 the merits. That is precisely what is lacking in this measure—an avenue to obtain meaningful judicial review and accountability.

Those who support retroactive immunity for the telecommunications carriers without providing an effective avenue to challenge the program or obtain judicial review of its legality, support unaccountability, pure and simple. I would have supported the efforts of the Government to indemnify the telecommunications carriers if we could substitute the Government to have accountability. I also support alternative efforts by Senator SPECTER and Senator WHITEHOUSE to substitute the Government in those cases so that the cases could proceed to a judgment on the merits. That would have allowed judicial review and provided for accountability.

The Senate is going to vote on a bill today which does not allow that. All the years I was growing up in Vermont we were told nobody is above the law. All my time in law school we were told nobody is above the law. We take an oath of office when we are sworn into this body where there are only 100 of us to represent 300 million Americans, but we are also told no one is above the law. We are about to vote on a bill that says, well, the President and those people around him are above the law.

Just as Vice President CHENEY is not supposed to control the Congress, the administration is not supposed to control the Federal courts. In this democracy of coequal branches in which not even the President is above the law, judicial review is an important mechanism to correct the overreaching and excesses of the Executive. Since the landmark case of Marbury v. Madison, the principle of judicial review has been firmly established. Unfortunately, that principle is being sacrificed to this administration's claim that it, outside of all other administrations in this Nation's history—this administration, the Bush-Cheney administration—should be able to act with absolute impunity and act outside the law.

On the other hand, I believe a Federal court could well find that the limitations this bill, if enacted, would place on the courts' ability to rule on the legality of this program are themselves unconstitutional.

Under the strictest read of the language of the bill, the cases in question will most certainly be dismissed. Attorney General Mukasey must simply certify to the court that the ''alleged'' activity was the subject of a written request from the Attorney General, which indicated that the activity was authorized by the President and ''determined to be lawful.'' This process gives me, and I would hope the Federal courts, pause.

If the judicial review provided by the bill is intended to be meaningful, the only way for that to happen is if the courts, in fact, review the legality of the warrantless wiretapping program. Surely, a court might find that it cannot dismiss an American's claim of a deprivation of rights based on the mere assertion by a party in interest that it told another party that what they were doing was ''determined to be lawful.'' In this setting, in fact, the current Attorney General is not certifying or representing to the court that the warrantless wiretapping program was lawful. All the bill requires is that the Attorney General certify that the phone company acted at the behest of the administration and that the administration ''indicat[ed]'' that the activity was ''determined to be lawful''—by somebody, at some time.

A court might reason that Congress could not have intended for the court to abdicate its judicial review role and become a mere rubber stamp. The court might nevertheless engage in ''meaningful'' judicial review. Wouldn't that be great.

How else, the court might reason, is it to assure itself that the Attorney General's certification is valid and worth affirming as a justification for closing the court house doors to Americans claiming deprivation of their constitutionally guaranteed rights? That is the only way to provide any real meaningful judicial review.

Indeed, the reasoning would go, any other reading would be an unconstitutional rule of decision. See United States v. Klein, 13 Wall. 128 (U.S. 1872). Congress simply does not have authority to tell the courts, a coequal branch,

how it must decide a case. So, in order not to reach that constitutional predicament, the court could interpret the statute to allow it to review the legality of the President's warrantless wiretapping program.

Another recent model for such meaningful review is that of the Court of Appeals for the District of Columbia in the Parhat v. Gates case. There, the appellate court invalidated a Combatant Status Review Tribunal's decision that petitioner Huzaifa Parhat, a member of a Chinese Muslim minority group called Uighurs, was properly designated as an ''enemy combatant.''

Under the restrictive language of the Detainee Treatment Act, the court's review in the Parhat case was expressly limited to consideration whether the status determination of the CSRT was ''consistent with the standards and procedures'' specified by the Secretary of Defense for CSRTs, and whether ''to the extent the Constitution and laws of the United States are applicable, whether the use of such standards and procedures to make the determination is consistent with the Constitution and laws of the United States.''

The Parhat decision shows that in order to make its review meaningful, the court interpreted its role as reviewing the probity and reliability of the evidence in order to reach its conclusion on the validity of CSRT's designation of Parhat as an ''enemy combatant.'' In so doing the court noted that to do otherwise would be ''perilously close to suggesting that whatever the government says must be treated as true, thus rendering superfluous both the role of the Tribunal and the role that Congress assigned to this court.'' It noted that ''[t]o do otherwise would require the courts to rubber-stamp the government's charges'' rather than engage in meaningful judicial review.

I believe that independent judicial review would reject the administration's claims to authority from the Authorization for the Use of Military Force to engage in warrantless wiretapping of Americans in violation of 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, would not prevail over the express provisions of FISA.

Indeed, Chairman ROCKEFELLER seemed to concede as much yesterday 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 it ''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 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 of its actions.

One Federal district judge in Detroit has already declared the President's warrantless wiretapping program to have been unconstitutional. Another in San Francisco just last week cast grave doubt on the legality of the President's warrantless wiretapping program, finding that the exclusivity provisions in FISA left no doubt that operating outside of the statute's framework was unlawful.

I urge the courts to exercise their rightful role to ensure justice is done.

As I have said, I recognize that this legislation also contains important surveillance authorities. I support this new authority, and have worked for years to craft legislation that provides that important authority along with appropriate protections for privacy and civil liberties. The Judiciary Committee reported such a bill last fall. I commend House Majority Leader HOYER and Senator ROCKEFELLER, who negotiated this legislation, for incorporating several additional protections that bring the bill the Senate previously passed closer to the Judiciary Committee's bill. While I would seek even greater civil liberties protections in Title I, there is no doubt that this bill provides stronger protections than the Senate bill I previously opposed.

I note, in particular, the requirement of an Inspector General review of the President's warrantless wiretapping program. It is a provision I offered and insisted upon when the Judiciary Committee reported its version of the FISA legislation. I had previously sought to add this provision to the Senate Intelligence Committee's bill. This review will provide for a comprehensive examination of the facts of that program and should prove useful to the next President.

I believe still more protections for privacy and civil liberties are necessary, and if this bill becomes law, I will work with the next administration on additional protections.

I should emphasize that while the Inspector General provision serves important purposes, its inclusion in this bill is no substitute for a legal review of the President's warrantless wiretapping program. Federal judges and Inspectors General perform different functions. Inspector General reviews can be very useful for factual review of past actions, and I expect the inspectors general to undertake a probing and comprehensive review. But Inspectors General are not well-suited to determine whether the President's warrantless wiretapping program was legal. In fact, this bill prevents the Inspectors General from engaging in that kind of legal review.

Courts, on the other hand, are well-suited to make these kinds of legal determinations. They do it all the time. Federal judges make conclusions of law every day in this country based on facts found by a jury or, if the right to jury trial is waived, based on their own factual conclusions. But this administration doesn't want this kind of review. It has fought for years to avoid a determination by our courts of the legality—or more precisely the illegality—of the President's program. If the administration gets its wish through passage of this bill, there will likely be no conclusive judgment on the lawfulness of the President's program—ever—and no accountability.

I, therefore, cannot support this legislation without amendment. I do not believe Congress should seek to take away the only viable avenue for Americans to seek redress for harms to their privacy and liberties, and the only viable avenue of accountability for the administration's lawlessness. This administration violated FISA by conducting warrantless surveillance for more than five years. They got caught. The apparent purpose of this bill is to ensure that they will not be held to account. That is wrong. I will vote to support the amendments before us today to bring accountability to this legislation, but I will vote no in opposition to the effort to secure immunity for this administration's illegal activity.

The PRESIDING OFFICER (Mr. NELSON of Nebraska). The Senator has 30 seconds remaining.

Mr. LEAHY. Mr. President, I reserve the remainder of my time.

The PRESIDING OFFICER. The Senator from Pennsylvania is recognized.

Mr. SPECTER. Mr. President, I have sought recognition to make the final argument in support of my amendment pending on a very vital issue facing this body.

We are asked today to do two things that I believe are unprecedented in the

history of the Senate. First, we are called upon to vote on legislation where most of the Members admittedly don't know what we are voting on; second, we are stripping the Federal court of jurisdiction on some 40 cases that have been pending for more than 3 years and are in the process of litigation.

On point 2, we are flying in the face of the most fundamental decision in the history of the United States on constitutional law, Marbury v. Madison, going back to 1803, 205 years, and Chief Justice Marshall saying that it is emphatically the province and duty of the judicial department to say what the law is.

But the Congress is now being asked by the administration to grant retroactive immunity to the telephone companies, where the judge who is presiding on the case, Chief Justice Vaughn Walker, in the Federal court in San Francisco, has declared that the terrorist surveillance program put into effect by the President violates the Constitution and exceeds his constitutional authority in directly violating the statutory provision that the exclusive way to wiretap is with court approval.

Here we have a situation where it is admitted that most Members of the House of Representatives, according to the House leadership, have not been briefed on the program. What we have are allegations in the legal papers as to having the telephone companies act at the request of the Government to invade privacy, without going through the customary judicial process of securing a warrant.

On the floor yesterday, after extended argument, it is plain that most Members of the Senate have not been briefed on this program. There is an old expression, ''buying a pig in a poke.'' It means buying something and you don't know what it is you are buying. Well, that is what the Senate is being asked to do today—to grant retroactive immunity to a program where the Members don't know what the program is. How does that comport with our reputation that we in the Senate so pride ourselves on, being the world's greatest deliberative body?

I suggest that this may be a historical embarrassment, where we are voting on matters where everybody knows we don't know what we are voting on. The fact may be that we vote with some frequency on matters that we don't know what we are voting on, where we have voluminous reports that are impossible for any Senator to go through. But here we are caught redhanded. Everybody knows we don't know what this program is; yet we are granting retroactive immunity to the telephone companies.

I believe the telephone companies have been good citizens. There is a way to have the telephone companies protected without giving up the program. That would be by substituting the Government as a party defendant, so you could both have the program and have the telephone companies protected.

Yesterday, in an extended discussion with the chairman of the Intelligence Committee and other Members on the floor, I pressed to see if anybody knew of any case that had been pending for more than 3 years, where Chief Judge Walker has handed down a lengthy opinion, running some 27 pages, on the issue of state secrets on this electronic surveillance. Just a week ago today, he handed down a 59-page opinion declaring that the Presidential power exceeded the constitutional authorization of article II. The first opinion is on appeal to the Court of Appeals for the Ninth Circuit. And here we are stripping the court of jurisdiction. I posed the question, Has that ever happened before? And it hasn't happened before.

I intend to support the amendment and cosponsor the amendment by Senator BINGAMAN, which would follow up on what the inspectors general do, to have it returned to Congress to see if the program is working. That is a good remedial step, but it doesn't go far enough. It has too many ifs, ands, and buts in it. I think it is a good fallback position, and I will support it. I urge my colleagues not to take Senator BINGAMAN's amendment as a substitute for my amendment because it doesn't go as far and it doesn't reach the constitutional issues.

We are dealing here with a matter that is of historic importance. I believe that years from now, historians will look back on this period from 9/11 to the present as the greatest expansion of Executive authority in history—unchecked expansion of authority. The President disregards the National Security Act of 1947 mandating notice to the Intelligence Committee; he doesn't do it. The President takes legislation that is presented by Congress and he signs it, and then he issues a signing statement disagreeing with key provisions. There is nothing Congress can do about it.

The Supreme Court of the United States has gone absent without leave on the issue, in my legal opinion. When the Detroit Federal judge found the terrorist surveillance program unconstitutional, it was affirmed by the Sixth Circuit on a 2-to-1 opinion on grounds of lack of standing. Then the Supreme Court refused to review the case. But the very formidable dissenting opinion laid out all of the grounds where there was ample basis to grant standing. Now we have Chief Judge Walker declaring the act unconstitutional.

The Congress ought to let the courts fulfill their constitutional function. 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 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, with great reluctance, I am prepared to support it again as a last resort, even if it cannot be improved by providing for judicial review. However, since Congress has been so ineffective in providing a check and balance, I am fighting hard today again to secure passage of my amendment to keep the courts open.

When the stakes are high, as they inevitably are, when Congress addresses civil liberties and national security, Members frequently must choose between the lesser of two imperfect options. Unfortunately, we too often back ourselves into these corners by deferring legislation until there is a looming deadline. Perhaps this 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 don't believe it is too late to make this bill better. Perhaps the Fourth of July holiday will inspire the Senate to consider its independence from the executive branch now that we have returned to Washington.

These issues are extraordinarily complex. It is my hope that my colleagues will focus on these two unprecedented acts where we are called upon to vote for something we admittedly do not know what we are voting for because we don't know what this program is; secondly, to take the unprecedented step of intervening in the judicial process on a case pending for more than 3 years in the Federal courts.

I thank the Chair and yield the floor.

The PRESIDING OFFICER. Who yields time? The Senator from Vermont is recognized.

Mr. SANDERS. Senator LEAHY has yielded me his remaining time.

The PRESIDING OFFICER. Senator LEAHY only has 30 seconds.

Mr. SANDERS. Yes. Mr. President, international terrorism is a serious issue, and every Member of this body has pledged to protect the American people, and we will do that. But we will and must do it within the context of the Constitution of the United States and the law of the land. No individual, no President, is above the law. This President, perhaps more than any other in history, has abdicated the Constitution of the United States. The time is now to stand up and say: No more.

Let's defeat this legislation. Let's assure the American people that in fact we are a nation of laws, not individuals.

Thank you.

The PRESIDING OFFICER. Who yields time?

The Senator from New Mexico.

Mr. BINGAMAN. Mr. President, I ask that I be allowed to speak for up to 10

minutes. I don't expect to use all that time. And then my colleague from Connecticut, Senator DODD, be allowed to speak for up to 15 minutes.

The PRESIDING OFFICER. That is part of the previous order.

Mr. BINGAMAN. Mr. President, first, let me comment on the statement Senator SPECTER of Pennsylvania made about his own amendment. I support his amendment. I wish to make it very clear that the amendment I am offering is not intended as a substitute for his amendment. I favor his amendment. I favor the amendment I am offering as well. And, of course, I favor Senator DODD's amendment as well, which he is going to speak about in a few moments. I wished to make that clear.

Let me describe the amendment very briefly. I did that yesterday. This amendment is cosponsored by Senators CASEY, SPECTER, CLINTON, and NELSON of Florida. It is based on the simple proposition that we ought to conduct a thorough investigation before we grant any retroactive immunity to telecom companies.

In my view, the structure of this bill has it backward. As currently drafted, it would grant immunity first, and then after those companies are shielded for any potential liability for their past actions, the legislation requires a comprehensive investigation regarding the company's participation in the President's warrantless surveillance program.

The amendment I am offering would fix the problem by putting in place what I believe is a more logical process.

As I discussed yesterday, the amendment would do three things. First, it would stay all the civil cases against the telecom companies as soon as the legislation is signed into law. Second, it would allow time for the inspectors general to investigate the circumstances surrounding this warrantless surveillance program. And third, it would give Congress 90 days to review the findings of that investigation before the companies could ask a court to dismiss the cases pending against them.

I believe this is a very modest proposal. It would not change any of the substantive provisions in the immunity title. The amendment only modifies the timing of when these companies may seek immunity.

The amendment would not prejudice or harm the telecom companies while the investigation is being conducted. All the civil cases would be on hold and neither side would be incurring litigation expenses.

It would not create any risk whatsoever of sensitive information being leaked during the remainder of the litigation process. There would be no evidence submitted to the court during this period of stay. There would be no discovery. There would be no classified information being discussed. As I have stated, the cases would be stayed, would be on hold.

Lastly, the amendment would not hamper our Nation's ability to collect necessary intelligence. The amendment does not limit any of the authority being provided to the Government under this legislation to conduct foreign intelligence gathering. It would not discourage telecom companies from assisting the Government in the future. Under this legislation, companies would still be required to comply with lawful directives and would receive liability protection for any help they provide.

But the amendment does do something that I believe is very important. It would ensure that before these cases may be dismissed, Congress has an opportunity to know exactly what illegal acts, if any, it is forgiving. The Senator from Pennsylvania made a very strong case that Members of the Senate do not know what it is we are granting immunity for at this stage.

I believe the American people expect Congress to act in an informed manner. Quite frankly, other than select members of the Intelligence and Judiciary Committees, this Congress has not been fully informed about the circumstances surrounding this program. That is precisely why the investigation that is required under the legislation is so important and precisely why it is so important that we get the results of that investigation before we proceed.

We are talking about a program that was not conducted in accordance with the law and from what we do know may have violated the constitutional rights of many innocent Americans. I hope my colleagues will agree it is reasonable to keep these suits from being dismissed until at least we have a complete picture of what actions we are shielding from liability.

I yield the floor and yield back the remainder of my time.

The PRESIDING OFFICER. The Senator from Connecticut.

Mr. DODD. Mr. President, let me first, as I did last evening, begin by commending our colleague from West Virginia, Senator ROCKEFELLER, who has the unenviable task of chairing the Intelligence Committee, a complex committee with very serious issues before it. Whatever differences we have should not in any way suggest a lack of appreciation for what he and his staff and others do to try and bring forth legislation to allow us to balance the needs of our security as well as our rights as citizens.

It is that very question which draws me to this amendment I offered which will be subject to a vote in a few minutes. This is a debate that has gone on for the last 7 months, beginning with the Judiciary Committee's reports of last fall, a debate last December and that continued into January and has been going all winter and spring and about to be culminated with the decisions we are about to make over the next hour or so, including the amendment being offered by Senator SPECTER and Senator BINGAMAN, both amendments I intend to support.

The amendment I have offered, along with Senator FEINGOLD and a number of our colleagues, simply strikes title II of this bill. Title II of this bill is the title that grants retroactive immunity to the telecommunications industry.

The facts are very clear. The telecommunications industry, based on some documents, possibly a letter or others, decided it was appropriate for them to gather virtually all the e-mails, telephone conversations, and the like, of millions and millions of Americans, over a period of 5 or 6 years in the wake of 9/11. As I said repeatedly, had this gone on a month or a year or so, I would not have raised objections, given the emotion surrounding the attack on our country. But this program, I suggest, would still be ongoing had it not been for a whistleblower who helped identify the program.

This is not an issue of whether we disagree at all with revising the Foreign Intelligence Surveillance Act to comply with the needs as our enemies gather more sophisticated means by which they can do us harm. It is the age-old question which has confronted this Republic of ours for 232 years. And that is: How do we balance security with simultaneously protecting the rights under our Constitution? Every generation who has preceded us has wrestled with this question.

The one issue we do not subscribe to is the notion that to be more secure, you have to give up rights. That is a fundamentally flawed idea. Every generation who has suggested and adopted it has regretted it in one case after another. Whether it was internment of Japanese Americans out of fear and other such cases, in every instance when we abandoned rights for security, we have come to regret it deeply.

I come, again, to offer this idea to allow the judiciary to do their job. That is what they exist for, that is why the Founders created three coequal branches of Government—the executive, legislative, and judicial branches.

We are not deciding the case. We are merely saying the courts ought to do that. Retroactive immunity for companies that may have broken the law may well soon become the law. That is the danger. As certain as it appears the outcome of the votes will be, equally certain, in my view, is that this matter will not end today regardless of what we do. This will end up in the courts, and there, not only the wisdom of granting retroactive immunity to these companies will be questioned but the constitutionality of that decision.

I have spoken at length about this legislation. It subjugates the role of the courts. But even as this body moves forward with this bill, opponents of retroactive immunity can take some solace in knowing it will still ultimately be the judiciary that decides the constitutionality of this action, as the Framers intended.

I can hardly see how it would have passed muster with our Founders. It was, after all, James Madison who said:

I believe there are more instances of the abridgment of the freedom of the people by gradual and silent encroachments of those in power than by violent and sudden usurpations.

He spoke those words at the Virginia Convention to ratify the U.S. Constitution.

I can hardly see how men who did not simply utter such sentiments, but rather sacrificed everything in the name of them, could have envisioned America ceding her hard-fought liberty in a moment of fear or weakness.

Is this bill constitutional? This is not for me or any one of us to decide. I am not a judge. None of us are. We are not a jury in this case. None of us are. We are Senators who treasure the document we have sworn to uphold. I have kept a copy with me every day, going back the 27 years I have served in this body.

What is for this body is to decide how we best safeguard our Nation's security. Greater security for our citizens is what, of course, all of us want from this bill. But if we have learned anything from this administration, it is that there is a right way to protect our Nation and a wrong way.

We learned that when even those of us in this body act with the best of intentions, we can still do lasting damage because we are not acting with foresight and prudence but with an impulsiveness and, in too many cases, out of fear.

No one doubts for a moment the gravity of the threats we face or continue to face. No one suggests we do not have an obligation to monitor terrorists' communications with the utmost of vigilance. I wish to make sure the Government has every tool it needs to do so. I have no interest whatsoever in denying our Government what it needs to make our country safe. I want our President to have the capabilities to stop terrorists before they act, before they inflict harm on our country, our communities, and our families. I think we can and must do that in a way that balances national security with our rights and liberties.

But for reasons I have described at length in previous debates, this so-called compromise strikes no balance at all, in my view.

Let us be very clear, the courts have continuously shown an ability to handle cases with sensitive security issues. Chief Judge Vaughn Walker, a Ronald Reagan appointee to the District Court to the Northern District of California, who has virtually overseen all the cases challenging the NSA's warrantless wiretapping program, demonstrated this once again.

In a case against the Government, Judge Walker recently ruled ''FISA preempts the state secrets privilege in connection with electronic surveillance for intelligence purposes . . . '' This ruling suggests that in suits against the telecommunications companies, they will be able to defend themselves and not be hamstrung by the state secrets privilege. At the very least, this decision highlights how premature it would be for Congress to grant retroactive immunity at this time.

The sum and substance of our argument is very simply this: Now is not the time to close the courthouse doors on this issue. I cannot say it enough. My trust remains in the courts in cases argued openly and judges presiding over them and juries of American citizens who decide them. Our courts should be a source of our pride, not our embarrassment. They deserve the chance to do the job the Framers intended them to do.

As complex, as diverse, as relentless as the assault on the rule of law has been, our answer to it is a simple one. Far more than any President's lawlessness, the American way of justice remains deeply rooted in our character as a people that no President can disturb. That is why, even on this day, I remain full of hope and faith that we can unite security and justice because we already have over the generations.

I harbor no illusions about what is about to happen with this legislation or its consequences. But even as this long fight draws to a close, it is worth pausing for a moment to recognize those who have joined us in writing its many chapters. They have not been written by any one hand alone.

Senator RUSS FEINGOLD of Wisconsin has fought this battle with me from the very beginning. His leadership has been articulate, his commitment unwavering and unyielding.

The Senator from Vermont, Mr. LEAHY, the chairman of the Judiciary Committee, fought valiantly to bring the Senate Judiciary Committee version of this bill that he crafted to the floor of this body. He has been a staunch opponent of retroactive immunity.

The majority leader, HARRY REID of Nevada, has stood with us on this fight. I thank him for it as well. It has not been easy to have been the majority leader taking the position he has and also managing this bill to move forward. Even as he fought and sought to balance his personal opposition to retroactive immunity with his responsibility to move this legislation as leader, he has given us every opportunity to speak out against this legislation. He has worked hard to make sure the world's foremost deliberative body, as it is often called, would, indeed, be given a chance to deliberate over a matter that goes to the very core of who we are as a republic. In Congresses past, I cannot say, with certainty, that my colleagues and I would have been afforded the opportunity the majority leader has given each and every one of us, and I thank him for it.

Lastly, I thank the thousands who joined with us in this fight around the country, those who took to the blogs, gathered signatures for online petitions, created a movement behind the issue, men and women, young and old, who stood up, spoke out, and gave us the strength to carry on in this fight. Not one of them had to be involved, but they chose to be involved for one reason and one reason alone: their deep love for this country, the Constitution, and its liberties. They remind that the silent encroachment of those in power, as Madison spoke of, can, in fact, be heard if only we are willing to listen.

All of us, my colleagues and citizens around the country, share a fundamental belief in our Constitution. We believe our constitution isn't incidental to our security, rather it is its very foundation. This notion that it is the rule of law that keeps us safe should not be controversial. There should not be a partisan divide. I take no backseat, as no one does, when it comes to protecting America's safety and security. But if history has taught us anything, it simply doesn't require sacrificing our freedoms to do that.

I do not believe history will judge this President kindly for his contempt of the rule of law. But will history be any kinder to those of us who have served as these transgressions have occurred on our watch? I have two young daughters. Their generation is going to ask their parents and grandparents some very pointed questions:

Where were you when the President asked you to repudiate the Geneva Conventions and strip away the rights of habeas corpus? Where were you when stories of secret prisons and outsourced torture first began to surface and then became impossible to deny? And of today, they will ask: Where were you when Congress was persuaded to shield wealthy corporations that may well have knowingly acted outside of the law to spy on our fellow citizens? Where were we in that debate?

History will not forget. It will not forget our role in any of this. And just as surely as subsequent generations will ask all of us those questions, what will be clear is that we will have failed to ask ourselves one very fundamental question: Does America stand for the rule of law or for the rule of men? That question never goes away. It has been the same question asked for more than two centuries. It has been with us, of course, these past 7 years in very strong and poignant ways. It will haunt us long after this bill passes, long after this administration recedes into history, long after we all have passed into history ourselves. Indeed, generations of leaders and free societies have struggled to answer the question for thousands of years.

That is the question every generation must answer for themselves. It is a battle for the American soul, waged between our better angels and our worst fears. Our Founders answered the question correctly. I ask the question: Will we?

Mr. President, allow me to close with one of my favorite quotations, one I have recited many times on the floor of this Chamber. It is from Justice Robert Jackson's opening statement at the Nuremberg trials in the summer of July of 1945. He said . . .

That four great nations, flushed with victory and stung with injury, stay the hand of vengeance by voluntarily submitting their captive enemies to the judgment of the law is one of the most significant tributes that Power has ever paid to Reason.

The tribute that Power owes to Reason is as clear today as it was when those words were spoken more than half a century ago. That America stands for a transcendent idea; the idea that laws should rule, not men; the idea that the Constitution does not get suspended for vengeance; the idea that when this Nation begins to tailor its eternal principles to the conflict of the moment, it risks walking in the footsteps of the very enemies we despise. As Margaret Thatcher said: ''When law ends, tyranny begins.''

Today, let us pay the tribute that Power owes to Reason today—in this moment, with these votes. I implore my colleagues to vote against retroactive immunity, against cloture, and above all, for the rule of law.

Mr. President, I yield the floor.

Mr. ROCKEFELLER. Mr. President, yesterday, we heard some discussion of last week's decision in the district court in California. In that case, the court ruled that FISA limits the power of the executive branch to conduct foreign intelligence surveillance activities and limits the executive branch's authority to assert the state secrets privilege. That opinion, however, is only minimally relevant to the debate before us today for three reasons.

First, the decision was in a case against the U.S. Government. In contrast, title II applies only to cases against telecommunications companies, not to suits brought against the Government. The case will therefore be unaffected by title II.

Furthermore, because a provider could be entitled to protection from suit under existing law even if the Government acted unconstitutionally, this decision does not resolve the question of whether telecommunications companies acted lawfully or should be entitled to immunity.

Second, the decision in the case is only one step in a lawsuit that may continue in the district court and which will likely be appealed. This decision, which is a long way from being final, does not affect the need for the Congress to act on this legislation.

Third, the court found that the civil liability provisions of FISA trump the state secrets privilege only to the extent that those civil liability provisions apply. This is not a broad exemption to the state secrets privilege. The opinion does not change the fact that the companies are and, unless we pass title II, will continue to be unable to assert their statutory defenses because of the Government's assertion of the state secrets privilege.

The one thing that the decision shows us is that the court can consider the issue of constitutionality in those suits being brought against the Government. Congress therefore does not need to require the courts to consider that issue in suits against private companies.

The PRESIDING OFFICER (Mr. CASEY). The Senator from West Virginia.

Mr. ROCKEFELLER. Mr. President, is there a time set for the beginning of the votes?

The PRESIDING OFFICER. There is not. There is approximately 30 minutes of debate remaining.

Mr. ROCKEFELLER. This Senator wanted to be clear about that because Senator BOND will be coming. I will speak shortly, and then he will come down to speak also.

Mr. President, we are at quite a remarkable period now, because we are actually closing the debate on something which we have been discussing in this Chamber, in committees, around the Congress, in the press, in general, for quite a long time. It has been an amazing debate, and today we close debate on the Foreign Intelligence Surveillance Act Amendments of 2008.

I wish to thank all of my colleagues for engaging in this critically important debate, both on and off the Senate floor, whether for or against whatever amendments we will be voting on today. People have expressed their principles, they have been articulate, they have spoken with restraint and dignity and eloquence, and I respect that very much. I think that is the essence of senatorial behavior. We have vigorously debated the appropriate controls for electronic surveillance to collect foreign intelligence information since the disclosure was made 2½ years ago about the President's wireless surveillance program, which is a travesty—a travesty from 2001 to 2007. An absolute travesty. And because of the contributions not only of those who have supported earlier versions of this legislation but also of those who have opposed various provisions to deal with those issues, we have moved forward to craft, in this Senator's judgment, a strong bipartisan, bicameral compromise that is supported not just by the Senate but also by the House, which was unwilling to support it before at all, but also by the Attorney General and the Director of National Intelligence, both of whom are entirely relevant to what is in this bill and what is to be said about what is in this bill.

This final product is critical to the Nation's security. I am aware of both our rights and our security. In my job as chairman of the Intelligence Committee, I have to look at both. I was brought up in a tradition, in a family which worried about rights, and I have fallen into a position where I am in a position to see what goes on in this world. In a post-9/11 situation, it is very different. It is like comparing fighting wars against the Soviets as opposed to against al-Qaida, the Taliban, or whatever it is. It is a very different world. You can't tell who anybody else is, you can't tell what their intentions are, you can't tell what is in a suitcase which might be lying anywhere in this building or anywhere else.

When you walk around this Capitol, you see levels of security which you have never seen before. We frequently evacuate this building and our offices, all because of what happened on 9/11, and what had been planned well before that. So it is serious. And not that it makes any difference—it makes us no more important than any other citizen in the United States—but we do know that United Airlines 93 was headed for this building and for this complex. So there is an instinct to understand that those who oppose us and who would have us change our way of life and punish us for what they see as our sins are very serious in their work, patient in their work, and willing to wait to continue their work.

The final product is, therefore, critical to the Nation's security, and it sets forth a legal framework to reflect the enormous changes in telecommunications technology over the last 30 years. The bill couples this improvement in foreign intelligence collection against foreign targets overseas with important protections for civil liberties, including the review by the Foreign Intelligence Surveillance Court of the targeting and minimization procedures governing these collection activities.

In addition, the bill ensures that when Americans overseas are the target, that a FISA Court judge, rather than the Attorney General—in a very important change—decide that there is clear authority and probable cause for intelligence agencies to target such an individual.

The bill also requires the Attorney General to develop guidelines to prevent prohibited activities, such as reverse targeting. That was put before us by Senator FEINGOLD, who is in opposition to this bill but who made that contribution to this bill, along with others, to ensure individual FISA Court orders are obtained, when required.

You can't do anything these days without a FISA Court review if you are in the Government. You can't do anything. That is only title I of the bill, not title II.

There are new oversight and reporting requirements to Congress in the agreement and a sunset date that means these issues will be addressed during the next administration. And I think that is very important, because some people said: Well, let this law be permanent and forever.

There were those of us who didn't want that to happen. We said: We are in new territory here. It is a post-9/11 world. It is very different. So we need to put down into law what we believe, but we also need to go back and review that, to make sure we have done it correctly. So in a period of 4½ years, during the administration of the next President, he will be able to review, along with us, what we have done and

decide if we need to make any changes. I like that. I think that is fair. I think that is democratic.

Certainly the most controversial aspect of this legislation has been those provisions that set standards and procedures that allow the courts to find limited immunity protection for electronic communication service providers alleged to have assisted the Government in the President's warrantless surveillance program. Under this agreement, however, these provisions are not the blanket immunity that the administration first proposed, nor are they a statement by the Congress either pro or con on the legality of the program.

We have debated these liability protection provisions in great depth over the past 2 days—over the past 2 years, really. As I have said in opposition to the amendments that were offered to strike or amend the limited liability provisions, I am convinced the bill takes the right approach. We did have efforts to have substitution rather than immunity, and they were defeated. They were defeated in the Judiciary Committee, they were defeated on the floor of the Senate, and it was thought if they would be brought up again, they would have been defeated again. So we have been through this. The Senate has worked its judgment on that approach.

I believe the requirement in the bill for the inspectors general to complete a comprehensive review of the President's program is much more likely to provide the American people a complete set of facts about the program on a timely basis, to the extent that classification permits, than would continuation of the pending litigation. In other words, we have improved it.

And to be quite honest, we passed this 13 to 2 in committee, and then with 68, 69 votes, whatever it was in the Senate, we passed the Senate bill that came out of the Senate Intelligence Committee, but the House had not. They were not happy. They had their reasons. And so we went to them, the vice chairman, CHRISTOPHER BOND, and myself and our staff, and we worked with them endlessly. We worked with the White House, to some extent; with the DNI, the Director of National Intelligence, the Attorney General's office, extensively working through individual ways of compromising to make sure that we could protect companies that provide the intercept and the collection of communications we need to get, but to do so in a way which made it clear that the Government was the issue, not them. And we have done that.

Finally, with this agreement, we settle the issue of whether past or future congressional authorizations for the use of military force that do not include a reference to surveillance may be used to justify the conduct of warrantless electronic surveillance. This was an extraordinarily important thing to do, and Senator FEINSTEIN deserves a lot of credit for that—the exclusivity amendment. We have said you cannot conduct any of this collection outside of FISA. You have to have a warrant. You cannot go outside. You cannot use what the President likes to refer to as inherent powers to do anything he wants. You can't do that. You have to have authorization from the Congress in order to do that. That is clear—for the first time in this bill. That is huge. That restricts some of the comments we have been hearing earlier.

FISA remains the exclusive means by which electronic surveillance or interception will be conducted from this point forward unless the Congress sees some reason to make it either stronger or whatever. With enactment of this bill, there will be no question that Congress intends that only an express statutory authorization for electronic surveillance or interception may constitute an additional exclusive means for that surveillance or interception. In other words, you cannot do anything more without congressional authorization. That is oversight. That is what we ought to be doing. It is what we should have done but we didn't do. The world changed. We didn't change quickly enough. But we have changed enormously in this bill.

This is buttressed further with the clarification that criminal and civil penalties can be imposed for any electronic surveillance that is not conducted in accordance with FISA or specifically listed provisions of title 18.

In closing, I would like to address my colleagues who would have preferred a different result than the agreement before us today. I urge them not so much now—there being not much time—but I urge them in the coming days, weeks, and months to look at this legislation in its entirety; not to think about a single point here or a single point there but to look at the whole texture of it. This is what we are doing. That is why we have a sunset date, so we will again be looking at it, looking at the larger picture, seeing what the balance really is and are we keeping it properly as between safety and civil rights, individual rights. That is very important.

This is a bill which provides a framework and stability within the Foreign Intelligence Surveillance Act for a collection system that will work well for national security. That is very important to this Nation. That is very important to this body and to every single American. This bill is vastly better than the Protect America Act, obviously, enacted last August, and much preferred to any additional short-term extension of that flawed statute—which was one approach. This is a bill which contains important safeguards for civil liberties and effective mechanisms for oversight.

I do not think any of the committees that deal with these measures will ever be the same again, nor have they been in the last year and a half with respect to oversight. The vigor, the passion with which we sought, leveraged, coerced in some cases, the administration to make more people read into the program, to make more people a part of the discussion, make more people a part of the knowledge which they held so closely to themselves—I remember at one point I was one of 4 out of 535 people who were briefed on the program, and they kept saying on television: The Congress is briefed. And this was a joke, this was a farce. I will not go into it further but, believe me, it was. They did not do that, they did not want to do that. That is their nature. Now it is different. Now we are all over them. And we have a lot more to do before this Congress gets out with respect to the oversight factor of Congress, which is so important to us and to the Nation.

Support for the agreement says to the intelligence professionals who will implement the new authority that Congress takes seriously its oversight responsibilities. Some of them do not like that fact. They do not want us to. They want to be able to do what they have always done because they could do what they always wanted to do—before the world changed. Now they cannot. Yes, we have had intelligence committees for a long time, and, yes, they have done work for a long time, but there has never been a greater need for tough oversight.

Sometimes when the Director of the CIA calls me—and I don't think I am saying anything privileged here—and he wants to tell me about something good that has happened—it is a secure conversation on a secure phone—I say: Look, when I hear from you, I want to hear what you want to tell me that is good, and I also want to hear from you about something that is not working right.

That is the pattern which is developing. They are a little more timid about coming up to us. We have to negotiate more to have them come before us, but we do it because we need them and they need our oversight. They are not free to do entirely what they want to do, but we have to give them the full right to keep us safe, yet balance, as I believe we do in this bill, civil liberty protections.

I simply close by congratulating all people involved. I think for a subject which was meant to be understood by so few in this body, many people have expressed views on the floor and to many of us in private. It has been the subject of caucus discussions.

It is a major piece of legislation, and I urge my colleagues to oppose the three remaining amendments, and I urge my colleagues to vote yes on final passage. They will serve their Nation well.

I yield the floor.

The PRESIDING OFFICER. The Senator from Florida.

Mr. NELSON of Florida. Mr. President, is there an order established here under unanimous consent?

The PRESIDING OFFICER. There is 3 minutes remaining for the Senator

from Wisconsin, Mr. FEINGOLD, and 9 minutes for the Senator from Missouri, Mr. BOND.

Mr. NELSON of Florida. Will the Senator allow me to have a couple of moments?

Mr. BOND. Off Senator FEINGOLD's time.

Mr. NELSON of Florida. What is the procedure? Since Senator FEINGOLD is not here, is that locked in as such for him?

Mr. ROCKEFELLER. Mr. President, might I inquire whether that was entirely necessary—or, rather, of the Parliamentarian—is that entirely necessary? The Senator does wish to speak. We are not starting votes quite yet. There does not seem to be a total limit on that, a time set for that, and the Senator has been wanting to speak for a number of days. I would be happy if he would be able to do that.

The PRESIDING OFFICER. There is only 3 minutes on the majority side for Senator FEINGOLD. It would require unanimous consent.

Mr. ROCKEFELLER. What about leader time?

The PRESIDING OFFICER. Only the leader has leader time.

Mr. ROCKEFELLER. And that is correct.

The PRESIDING OFFICER. The Senator from Washington is recognized.

Ms. CANTWELL. Mr. President, I rise today to express my strong disappointment with the FISA Amendments Act of 2008, H.R. 6304. While proponents of this bill have claimed this bill was designed to monitor foreign-to-foreign communications that pass through the U.S. without a warrant, the bill actually goes much further—providing a broad expansion of authority to conduct domestic surveillance.

We all want to protect our country's national security interests and protect Americans from those who would do us harm, but to do so without accountability or without adequate checks and balances is contrary to the vision of our Founding Fathers.

I recognize that some changes have been made to this bill over the past 6 months but those cosmetic changes have failed to adequately protect the privacy rights of innocent Americans.

This bill permits the Government to collect all Americans' international communications, even communications of innocent Americans with no connection to terrorism or other national security concerns. This bulk collection of innocent Americans' private communications is unacceptable and contrary to American values and fundamental Constitutional protections.

While this administration has ignored the congressional mandate that the Foreign Intelligence Surveillance Act is the exclusive means for conducting wiretapping activities on American citizens, Congress can not ignore the weighty constitutional issues being decided here today.

I am also very troubled that telecom companies will not be held accountable for participation in the Bush administration's warrantless surveillance program. Congress should not be providing blanket immunity for telecommunications companies that cooperated with the administration's warrantless wiretapping programs. We don't know precisely what those companies did or the full extent of what they did.

This bill effectively grants retroactive immunity to companies that aided the Bush administration's warrantless wiretapping over the last 7 years. It would effectively dismiss 40 cases pending against the telecommunications companies that are undergoing judicial review. Judicial review is a critical component of our Government to check potential overreaching by the executive branch.

This administration wants to ensure that no court has the opportunity to review potential illegal activity, effectively slamming the door shut before the judicial system can determine whether American citizens' rights were violated.

This is why I voted in support of Senator DODD's amendment to strike the immunity provision today, and I am disappointed that it was not adopted. Congress should respect judicial review and not take away the only opportunity for redress available to American citizens for potential overreaching by this administration.

According to public documents and media reports, a telecom company allegedly split off a copy of the Internet traffic transported over fiber-optic cable running though its San Francisco office and diverted it to another room under the supervision of a Federal Government agency, where the copy was transported to equipment that could review and select out the contents and data mine call patterns of communications.

The reason I say allegedly is because all the details are classified, sources and methods, and those who do not know can at best only make educated guesses while those who do know can not or will not say.

Now the Electronic Frontier Foundation believes that the telecom company has deployed similar facilities in 15 to 20 different locations around the country, implying a significant fraction of the communications to and from the telecom firm's domestic customers could have been examined illegally. And it is critical that we get to the bottom of this.

Congress would be acting even though only last week Judge Walker issued a key ruling holding that held that the government could not prevent plaintiffs from submitting unclassified evidence to support their claims against telecommunications companies. Congress should respect the judiciary's role and allow it to move forward with these cases.

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

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

The PRESIDING OFFICER. Nine minutes.

Mr. BOND. I yield a minute and a half to my distinguished colleague from Florida.

Mr. NELSON of Florida. I am grateful to the vice chairman. I wish to say—and I will do it in a minute and a half—how much I appreciate the chairman and vice chairman being able to come up with a product that we need so we get some certainty about the court review of this process so we can balance this interest of going after the terrorists but at the same time protecting the civil liberties of American citizens and American persons who are here legally in the country. I think the bill does that. We have struggled with it for a year and a half in our committee. I am certainly going to support the final product.

There are obviously some matters we have had in the Intelligence Committee that we are not able to discuss here. I am sure the people listening understand that. I just want to say on the controversial issue of immunity that I do not believe in blanket immunity for the phone companies, and that is why, when this issue was in front of our Intelligence Committee, I offered language to deny them immunity. But it failed, my amendment, and it failed miserably. So when it came to the floor, I offered a compromise to the full Senate, along with Senator FEINSTEIN, that would have required a special court to review the phone companies' action, but that failed as well.

Now I am backing an amendment by Senator BINGAMAN that would at least delay immunity until the inspectors general of the U.S. Government complete their investigation of the President's warrantless wiretapping program. Upon completion of the report, the Senate will have 90 days to act before immunity is granted to the telecommunications companies. This will allow us time to change some minds if real wrongdoing is found.

Overall, I believe this legislation significantly improves civil liberties protections for Americans while enabling our intelligence community to listen in on terrorists. This is an important step forward and I will support this legislation.

Mr. BOND. Mr. President, I thank the distinguished Senator from Florida, who has been a hard-working member of the Intelligence Committee and has been a great contributor. I am sorry he does not agree with the compromise we reached with the House to have the district courts make a review. I think that is important. That satisfies our needs.

Several points made on the floor today and previously need to be answered. It has been said that the new surveillance powers allow the Government to collect all communications between the United States and the rest of the world, millions and millions of communications between innocent Americans, parents calling children

abroad, people serving in Iraq. There is no prohibition on reverse targeting.

A plain reading of the bill shows us that this statement is simply inaccurate. As the Senator from Utah said earlier today: Unless you have al-Qaida on your speed dial, you are not going to be collected against. There are safeguards in place to ensure that any conversations that do not have foreign intelligence information will not be kept or shared, they will be minimized or suppressed.

Americans either inside or outside the United States may not be targeted without court order. That ''outside of the U.S.'' protection was something we added on a bipartisan basis in the Senate Intelligence Committee.

In addition to approving any collection against Americans, anybody in the United States, an American overseas, the FISA Court will review all procedures used to target foreign communications and make sure that communications with innocent Americans are minimized or suppressed.

As far as reverse targeting goes, I refer my colleagues to section 702(B) of the bill which says:

> An acquisition authorized under subsection 8 may not intentionally target a person reasonably believed to be located outside the United States if the purpose of such acquisition is to target a particular known person reasonably believed to be in the United States.

I can assure you that I and other members of the Intelligence Committee have reviewed the procedures, have seen the operations, know the supervision, and know the very tight constraints under which these professionals operate. They are overseen by supervisors, by higher level authorities, by inspectors general, by lawyers, their own lawyers, and lawyers from the Department of Justice. Somebody made an error and collected some criminal information a year or so ago and that was dealt with appropriately. There is no ability for somebody, even a rogue who happens to get in, to get away with targeting innocent American communications.

There has been a lot of debate also about the Senators having access to all of the information. As I pointed out earlier, we set up the Senate Select Committee on Intelligence to provide the most highly classified information to members of the committee. I have worked hard with the chairman, and we have opened to the full Intelligence Committee far more information than we ever got before, because I believe the Intelligence Committee has a heavy responsibility to make sure that what is being done stays within the law, stays within the guidelines, and protects the rights of American citizens.

But if you say that every intelligence matter should be briefed to the entire Congress, where does that stop? Should we then brief the New York Times directly so they can publish a story and decide whether the intelligence activity is acceptable? I think not. I think we have seen the problems that occur when leaks have compromised our intelligence. They have done it too often.

Some people still want to debate the legality of the TSP, saying it is blatantly illegal. Well, they persist in their belief that the President lacks the constitutional authority to conduct warrantless foreign intelligence surveillance, even though article II has not changed in over 200 years.

The FISA Court itself, en banc, In re: Sealed Case, has noted the President has that authority, and if the Congress tried to pass a law saying the President does not have that authority, it would be found to be unlawful.

The intelligence community has been overseen by the Intelligence Committee, and we have found clearly that the companies acted in good faith. Regardless, however, of the legality of the President's TSP, it is a matter of fundamental fairness. These providers should not be punished by forcing them to litigate frivolous claims or by delaying this much needed relief.

Without these companies, without their active participation on this and many other matters, the intelligence community is fearful and has lost cooperation in the past. They are taking risks by being good patriotic Americans, and there are some who want to punish them. They want to kick them to get at the administration. Well, this bill does not prohibit lawsuits against the Government or Government officials.

I believe the time has come for us to pass a bill after 15 months. We now know that we have before us the ability to give clear authority, direction, and guidelines to the intelligence community to operate to keep us safe. We have added new protections, and if the President had not followed the advice of the ''gang of eight'' and had tried to reform the FISA rather than using article II, we would not only be debating September 11, there would be many others.

I urge my colleagues to vote down all these amendments and pass this badly needed modernization of intelligence collection, electronic surveillance, and the provisions of the additional privacy rights and protections for American citizens.

I yield the floor.

AMENDMENT NO. 5064

The PRESIDING OFFICER. There will now be 2 minutes of debate equally divided prior to a vote on the amendment offered by the Senator from Connecticut, Mr. DODD.

Mr. ROCKEFELLER. All time has been yielded. I ask unanimous consent, en bloc, that the vice chairman and I ask for the yeas and the nays on all of the upcoming votes.

The PRESIDING OFFICER. Without objection, the yeas and nays may be requested on all three amendments.

Is there a sufficient second?

There appears to be a sufficient second.

The yeas and nays are ordered.

The Senator from Connecticut.

Mr. DODD. There is 2 minutes equally divided?

The PRESIDING OFFICER. The Senator is correct.

Mr. DODD. Mr. President, this has been a long debate. It started last fall. Again, let me commend the two members here, the chair and ranking member of the committee. I respect their efforts. But my friend from Missouri has made my case. This is a matter for the courts to decide, not for the legislative branch to decide. It is why we have three coequal branches of Government.

It is not our business as a juror and judge to determine the legality of what occurred here. This much we do know through published reports: Since 1978, 18,748 requests for warrants from the FISA Court have been granted; 5 have been rejected.

Why did this administration not proceed with the normal course of events here and seek justification and legal authority for the vacuuming up of private information of American citizens? All of us here want our agencies to do everything they can to protect our security. But all of us equally care about the liberties of our country.

The false dichotomy that is being suggested by what is in this bill, that in order to be more secure we have to give up rights, is a dangerous dichotomy. It is a false choice.

Previous generations have made it. We should not. Let's strike this title, allow the courts to determine whether what occurred was legal and then proceed.

Some of the companies did not do what others did because they felt it was not legal, what they were being asked to perform. Clearly there was some doubt in the minds of people as to justification. So I happen to believe the best way to proceed, as did Judge Walker, appointed by Ronald Reagan to the district court which has handled most of these NSA cases in the past, that the secret privilege will be protected, the court can do its job and determine the legality here. It is not the place for the Senate to act as the judicial branch of Government. That is why the Founders created three coequal branches of Government. That is what the issue is, the rule of law or the rule of men. That is what this amendment does by striking this title and allowing these matters to go before the court. I urge the adoption of the amendment.

The PRESIDING OFFICER. The Senator from Missouri.

Mr. BOND. Permit me to relieve the Senator from Connecticut, a good friend and a good legislator, of some of his concerns. No. 1: During the President's terrorist surveillance program, even though it was operating under article II, he went to the FISA Court to get warrants for listening in on American communications, the same procedure we have outlined in this bill

today. But what he was able to do was to listen in on terrorists reasonably believed to be abroad, which is now included in our bill.

Article II is clear that he has that right. Article II was used by President Bill Clinton for a physical search, a physical search of Aldridge Ames' home; and the Congress responded by giving him more power.

Secondly, it is said that the article II should be challenged. I point out that there is no ban, no ban on lawsuits such as a lawsuit before Judge Walker, on lawsuits going forward against the Government or Government officials.

The Intelligence Committee conducted a comprehensive review of the TSP. We determined, on a strong bipartisan basis, that the providers acted in good faith pursuant to representations from the highest level of the Government that the TSP was lawful. It is not right to punish patriotic Americans who step forward and help their Government by subjecting them to harassment of lawsuits.

I urge the defeat of the amendment.

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

The yeas and nays have been ordered.

The clerk will call the roll.

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

The result was announced—yeas 32, nays 66, as follows:

[Rollcall Vote No. 164 Leg.]

YEAS—32

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

NAYS—66

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

NOT VOTING—2

Kennedy	McCain

The amendment (No. 5064) was rejected.

AMENDMENT NO. 5059

The PRESIDING OFFICER. There will now be a period of 2 minutes of debate, equally divided, prior to a vote on the amendment offered by the Senator from Pennsylvania, Mr. SPECTER.

The Senator from Pennsylvania.

Mr. SPECTER. Mr. President, the Senate is not in order.

The PRESIDING OFFICER. The Senate is not in order. Please take your conversations out of the Senate.

The Senator from Pennsylvania.

Mr. SPECTER. Mr. President, I urge my colleagues to vote for the pending amendment to avoid two unprecedented actions. One is that the Senate is being called upon to vote on retroactive immunity for a program that most of the Members do not know and have not been briefed on. We frequently vote on matters that we do not know about but not when it is so blatant, when it is on the record that we do not know about it, we are caught red-handed. We ought not to be giving retroactive immunity on a program where most of the Members have not been briefed.

The second unprecedented act would be to intervene in a court decision which has been pending for 3 years, where a judge has found the terrorist surveillance program unconstitutional, where it is on appeal to the Ninth Circuit. And Marbury v. Madison, which is the cornerstone of this democracy, says the courts have to interpret the Constitution.

Mr. BYRD. Right.

Mr. SPECTER. Vote for this amendment.

I thank the Chair, especially for securing order. It is unprecedented. There is another unprecedented act today.

The PRESIDING OFFICER. The Senator from West Virginia.

Mr. ROCKEFELLER. Mr. President, I oppose this amendment, which would require the district court to assess the constitutionality of the President's program—which is not what this is about—before it could dismiss cases against any telecommunications companies which participated in it.

The amendment unnecessarily puts the burden of constitutionality—a burden that lies squarely on the shoulders of the Government—on the shoulders of telecommunications companies that cooperated with the Government in good faith. This is unfair.

Because the Government requires prompted cooperation from telecommunications companies, we do not ask those companies to make detailed legal assessments prior to cooperating with the Government. Their protection from suit should not be limited based upon constitutional questions they had no obligation to assess.

The significant constitutional question of whether the President's program was constitutional or lawful is properly addressed in cases against Government officials who are not immune. These cases can and should continue, without regard to this legislation.

I ask that people oppose this amendment.

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

The yeas and nays have been ordered.

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

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

The result was announced—yeas 37, nays 61, as follows:

[Rollcall Vote No. 165 Leg.]

YEAS—37

Akaka	Dorgan	Obama
Baucus	Durbin	Reed
Biden	Feingold	Reid
Bingaman	Harkin	Sanders
Boxer	Kerry	Schumer
Brown	Klobuchar	Specter
Byrd	Kohl	Stabenow
Cantwell	Lautenberg	Tester
Cardin	Leahy	Webb
Casey	Levin	Whitehouse
Clinton	McCaskill	Wyden
Conrad	Menendez	
Dodd	Murray	

NAYS—61

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

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.

AMENDMENT NO. 5066

The PRESIDING OFFICER. There will now be 2 minutes of debate equally divided prior to a vote on the amendment offered by the Senator from New Mexico, Mr. BINGAMAN.

The Senator from New Mexico.

Mr. BINGAMAN. Mr. President, first, I ask unanimous consent that Senator FEINSTEIN be added as a cosponsor.

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

Mr. BINGAMAN. Mr. President, the bill that is pending before us has the sequence of events in the wrong order. It provides that once the bill is enacted, companies can go into court and get the lawsuits dismissed. After that, there is an investigation provided for

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,

very broad, bipartisan, very bipartisan, support. The original Medicare Act passed the House of Representatives with a vote of 307 to 16. It passed the Senate by a vote of 70 to 24. That broad support was evident again on June 24 of this year before the break. That day the House of Representatives passed the Medicare Improvements for Patients and Providers Act. That bill would stop those cuts in doctors' payments. The House passed that bill with an overwhelming vote of 355 to 59; 355 House Members voted for it. That is better than a 6-to-1 margin. Even among Republican Members of the House, more than twice as many voted for it than against it.

On June 26, the Senate fell one vote short of invoking cloture on the motion to proceed to that bill. But today the Senate will reconsider that vote, and we should. The Senate should take up and pass this Medicare bill. The Senate should pass this Medicare bill because there is no alternative. If we fail to enact this bill, millions of America's seniors will be worse off. We cannot let that happen. This bill can prevent that. The House-passed bill is very similar to the Baucus-Snowe bill the Senate considered earlier in June, but the House made three noteworthy changes. First the House-passed bill includes legislation to delay the competitive acquisition program for durable medical equipment. Congress needs to ensure that these savings do not harm beneficiary access to care. We need to take a closer look at competitive bidding before it goes forward. Passage of this Medicare bill would allow that. The House-passed bill also does not include cuts in funding for oxygen supplies and equipment, and it does not include cuts in funding for powered wheelchairs. Those who support these reforms make a good case. But ultimately, the cuts could not be included as part of this must-pass legislation.

This bill is a balanced package. It is a compromise. It makes modest changes. When the House passed its children's health bill last year, the House made major changes to the Medicare Advantage Program. Last year's House CHIP bill would have significantly restructured the program. This House Medicare bill, however, would not do that. This bill includes a reduction in the double payment for medical education costs to private plans in Medicare, and this bill would protect seniors from unscrupulous marketing practices by private health plans. This bill would require so-called private fee-for-service plans to form provider networks. It would make sure that there are doctors behind those plans. Currently, those private fee-for-service plans do not have to do that. By fiat, they deem it to be the case. But it is not accurate. This bill would make sure there will be doctors behind those plans.

This bill does not include deep cuts due to the Medicare Advantage Program. Some suggest it does. It does not at all. It does not cut private fee-for-service plan payments at all. I wish to go further on Medicare Advantage. I think we should do more. But this is not the time, and this is not the legislation on which to do so. This, however, is the time to avert the pending cut in payments to doctors. That payment cut would devastate access to care for America's seniors. We cannot let that happen.

For Medicare beneficiaries, this Medicare bill would expand access to services. We all talk about greater access to preventive services. It would eliminate the discriminatory copayment rates for seniors with mental illnesses. We all talk about that. We want mental health parity. We do it in this Medicare legislation. And it will provide additional needed help for low-income seniors. We all talk about that need too.

This Medicare bill would take important steps to shore up our health care system in rural areas. It includes provisions from the Craig Thomas Rural Hospital and Provider Equity Act. Let's do this for Craig Thomas.

This bill also includes important relief for ambulance providers, community health centers, and primary care physicians. Primary care doctors represent the backbone of our health system. We all hear from home that primary care doctors are especially vulnerable and we give additional help to them. This Medicare bill would make important improvements in pharmacy payments. It would make payments under the Part D drug benefit fairer and more timely to those who dispense drugs to our Nation's senior citizens. We have all heard that pharmacists need this help because they are in a disadvantageous position in dispensing Part D drugs.

This bill would save money by providing a single bundled payment for all the services related to treating end-stage renal disease, and that will help reduce costs. For the first time, dialysis facilities would receive a permanent, market-based update to their payments each year, giving them a little bit of predictability. This would ensure that Medicare payments keep up with costs.

The bill would expand emergency health care for veterans in rural areas. It would increase payments for doctors who work in rural areas. It would stop the payment cut to providers. It would give them a decent increase in reimbursement. All of this would help to ensure that seniors and military families would be able to keep seeing the doctors they need to see.

On July 30, 1965, President Truman watched President Johnson sign the Medicare Act. That is what is shown in this photograph to my left. President Truman at that point said:

> Mr. President, I am glad to have lived this long and to witness today the signing of the Medicare bill, which puts this Nation right where it needs to be, to be right.

Yes, from its beginning, Medicare has been a moral issue. Medicare has been about doing good. So let us defend the elderly. Let us defend the disabled. Let us provide for our military families, and let us enact this important Medicare bill.

I know others are waiting to speak on the other side of the aisle. In a moment I will yield the floor, but before doing so, I yield half of the time remaining under my control to Senator SCHUMER and half of the time to Senator DURBIN for their use when they are recognized.

The PRESIDING OFFICER. Duly noted.

Who yields time? The Senator from Utah.

Mr. HATCH. Madam President, I rise to oppose cloture on the motion to proceed to H.R. 6331, the Medicare Improvements for Patients and Providers Act.

I am beginning to feel like the character from the movie ''Groundhog Day'' who wakes up every morning to the same day. Here we are again, having the same debate about the same Medicare bill that will not be signed into law.

I believe that our time would be better spent working on a bill to restore physician payments instead of having a partisan vote just to make some political points. It would be better to work in a bipartisan way. We could do it in 10 minutes, if we just sit down and do it. I know the distinguished chairman and ranking member could do it.

But it is obvious that some in this body would rather have a political battle and put Medicare beneficiaries and their doctors at risk.

In the last month, I stood on the Senate floor, not once, but twice emphasizing that I want to work on a bipartisan Medicare bill that will be signed into law. In fact, we had a bipartisan agreement in the Senate.

Unfortunately, Senate Democrats are still not permitting a vote on a compromise measure or even the Republican alternative.

The bipartisan compromise bill would have passed overwhelmingly, and this issue would be behind us.

And, quite frankly, H.R. 6331, essentially, the Baucus Medicare bill, contains many provisions that both sides strongly support.

It is troubling that only the Democrat Medicare bill is being given a vote on the Senate floor, especially when there is a Republican alternative that restores physician payments as well, especially since I believe Senators BAUCUS and GRASSLEY would have worked it out long before now without all the hoopla and politicization.

In addition, when the Democrat Medicare bill failed to get cloture a few weeks ago, the minority leader asked for unanimous consent to pass a 31 day extension of the December Medicare law. The purpose of this extension was to prevent the Medicare physician cuts from going into effect until we were able to work out our differences.

But Senator REID objected to this unanimous consent request for political reasons and told the Senate that

he wanted the Republicans who voted against cloture to feel the heat when they went home for the Fourth of July recess. I was a little shocked at that.

Fortunately, the Centers for Medicare and Medicaid Services, CMS, is delaying the Medicare reduction for physicians for 10 business days to give us more time. Unfortunately, we do not agree on one key issue—the Medicare Advantage Program. This program was created in the Medicare Modernization Act of 2003. I was on the conference committee and spent months working on Medicare Advantage.

Today, Medicare Advantage provides beneficiaries with many health care choices in addition to traditional Medicare.

Medicare Advantage plans are very similar to private health plans offered to those under 65 years of age. One out of five people in Medicare are on Medicare Advantage, and they love the program.

The Democrat Medicare bill includes reforms to the Medicare Advantage Program that are unacceptable to both the White House and many of us who support the Medicare Advantage Program.

Those of us who support Medicare Advantage feel that the provision in the Democrat Medicare bill will limit plan choices currently offered to beneficiaries.

Beneficiaries participating in the Medicare Advantage Program are happy with their health care coverage.

Every month, I receive hundreds of letters from my constituents telling me how much they like their Medicare Advantage plans.

Medicare Advantage is working across the country.

On the other hand, the Medicare+Choice program, which was the precursor to the Medicare Advantage Program, did not work very well, especially in rural areas.

That was because the Federal Government did not pay plans enough money to operate in rural areas.

The Utah Medicare+Choice plans left our State because plans could not function and they were losing money.

At that point, Utah Medicare beneficiaries only had one choice—traditional Medicare. And once we start disassembling the Medicare Advantage Program, as some in this body want to do, I believe that health care choices for beneficiaries will diminish. Through the Medicare Modernization Act, we finally figured out how to provide choice to Medicare beneficiaries in both rural and urban areas and how to pay plans appropriately.

But my friends on the other side cannot leave a good thing alone and insist on making changes to a program that works well today and that 90 percent of beneficiaries in Medicare Advantage are satisfied with.

The Democrat Medicare bill, if signed into law, will no longer allow private fee-for-service plans to deem.

Deeming allows beneficiaries in private fee-for-service plans to see any Medicare provider.

Deeming has been important to those living in rural areas where it is difficult for network-based plans to persuade providers to contract with them. It is also helpful to employer groups which provide retiree health coverage to those living in rural areas across the country.

The elimination of deeming could take away health care coverage choices for Medicare beneficiaries living in rural States.

In addition, the elimination of deeming could cause some retirees to lose their health benefits because the retirement plan cannot establish networks in all 50 States.

According to America's Health Insurance Plans, known as AHIP, 21,000 Utah beneficiaries may be dropped from their current Medicare Advantage private fee-for-service plans if the provision to eliminate deeming becomes law.

In fact, AHIP believes that 1.7 million seniors across the country could lose their existing health coverage if H.R. 6331 becomes law.

A few weeks ago, I mentioned that one Utah employer has said that the elimination of deeming will force the company to stop offering health care coverage to almost 12,000 retirees, and that is probably the tip of the iceberg.

I fear that the impact of this provision could be devastating, especially to beneficiaries living in rural States.

We truly do not know the full effect of this policy and how it will affect Medicare beneficiaries across the country.

Therefore, I simply cannot support this policy and it is the main reason that I am going to vote against cloture.

Do not be fooled—the bill we are considering today will not be signed into law.

The President has said he will veto the bill and there will not be enough votes to override his veto. I suppose some on the other side think they have a great political advantage if he vetoes the bill and we can't override it. They can use that against Republicans.

This motion must be defeated for the third time. We should not have had to go to three votes.

Hopefully, my colleagues on the other side of the aisle will want to work with us on a bill that can be signed into law because it would be bipartisan.

We must move forward so Medicare beneficiaries will no longer worry about their doctors dropping out of the Medicare Program.

We must move forward so physicians participating in the Medicare Program will not be cut by 10.6 percent. I don't think anybody in this body believes that we will allow that cut to occur; certainly, I will not.

We must move forward because the American people are getting tired of a do-nothing Congress where Members are not able to work out their differences.

Why don't we put all our differences aside? We could solve this in 10 minutes without making it a political fiasco which is what it has become. I think in the end everybody would be better off. Certainly, seniors who are on Medicare Advantage would continue to be better off than they would be if this very partisan bill passes through this body and is vetoed by the President and that veto is sustained.

I yield the floor.

The PRESIDING OFFICER. The Senator from Illinois.

Mr. DURBIN. How much time remains on the Democratic side?

The PRESIDING OFFICER. There is 7 minutes.

Mr. DURBIN. I yield myself 3½ minutes and reserve 3½ minutes for the Senator from New York, Mr. SCHUMER.

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

Mr. DURBIN. Madam President, this debate is about an important bill for 40 million Americans. It is about Medicare. It is about whether the doctors who provide benefits under Medicare will have a 10.3 percent cut in their reimbursement. Those of us who are for Medicare don't want to see that happen. It means fewer doctors treating senior citizens. It means fewer doctors who will be part of the program. So we are trying to stop this cut from happening. But we are running into resistance from the Republican side of the aisle.

The bill before us is a bipartisan bill that passed the House of Representatives by a margin of 6 to 1. Two-thirds of the Republicans in the House voted for this measure. It is a very bipartisan approach. But unfortunately, on the other side of the aisle, the Republicans are determined to oppose this bill.

Why? Why would they want to see fewer senior citizens with doctors they need under Medicare? Why would they want to see fewer doctors in the program? Because the way we pay for the doctors' compensation is by cutting back on the private health insurance companies currently trying to offer Medicare benefits. Now, why would we do that? Because, unfortunately, they are overcharging the Government—from 12 to 17 percent more than what the Medicare Program is charging for the same services. We believe they can cut back on their profits, they can reduce their costs, and they can still help seniors.

Remember when we started with private health insurance companies? The Republicans said: We want them to be able to play in Medicare. They can do a much better job than the Government. They will cut the costs dramatically. They will bring it down to 95 percent of what the Government charges. Exactly the opposite has occurred. The private health insurance companies have increased their costs over the years, and the Republicans who oppose this bill want to protect those companies. They do not want to see those private health insurance companies take

a hit, get a reduction in the amount of money paid by the Government. So they continue to refuse to vote for this measure to help Medicare physicians.

The last time we had this vote, we had 59 Senators who voted for it. What do we need today at 4:05 to strengthen Medicare? We need one more Republican vote, one more Republican Senator. Madam President, 9 of the 49 voted with us last time. With 10, we have the 60 votes, and Medicare will have a bright future.

For those who argue, well, President Bush just might not like the bill, I am sorry, but this bipartisan bill which passed overwhelmingly in the House should pass overwhelmingly in the Senate, and we should say to President Bush: It is much more important for us to protect 40 million seniors under Medicare and, incidentally, about 9 million military families under TRICARE from these kinds of cuts in physician reimbursement.

I have listened to the debate on the other side of the aisle, and it really comes down to a difference of philosophy. When Medicare was created, the Republicans, by and large, opposed it: Oh, it is a big Government program. It is socialized medicine. What did Medicare do for America? It gave peace of mind to seniors that the next illness would not wipe out all their savings. It gave them access to the best doctors and the best hospitals.

Do you know what? Seniors are living longer today than when they signed that Medicare bill into law in 1965. That is the proof of its success. But many on the Republican side of the aisle have never accepted it. They always want to go to the private health insurance companies, even when it costs too much for the seniors and for our Government.

This is our chance. One more Republican vote means the Medicare Program will be strong for years to come.

I yield the floor.

The PRESIDING OFFICER. The Senator from Texas.

Mr. CORNYN. Madam President, how much time remains on this side?

The PRESIDING OFFICER. There is 12 minutes 20 seconds.

Mr. CORNYN. Madam President, will you tell me when 5 minutes is consumed?

The PRESIDING OFFICER. I would be happy to.

Mr. CORNYN. Madam President, Congress should be embarrassed to have doctors and seniors come hat in hand every 6 months, every 12 months, every 18 months, and say: Please don't cut reimbursement rates for physicians. It is just a terrible way to do business. It puts people in fear that Congress will not act. It also provides opportunities for political gamesmanship that we have seen in an abundance on this particular temporary patch.

The fact is, Congress has only on one previous occasion allowed these cuts to go into effect, in 2002. Every year since it has acted. The fact is, we will. But what we need is a permanent solution, not a temporary patch. This is a terrible way to do business. The fact is, Medicare is a deeply troubled program. In fact, it will go bankrupt—parts of it—by the year 2019. But Congress is just whistling past the graveyard—whistling past the graveyard.

We need a permanent solution to this broken Medicare system. The fact is, many Medicare beneficiaries, many seniors cannot even find a doctor who will accept new Medicare patients because reimbursement rates are below market in many parts of the country. The fact is, the majority leader, by objecting to a 30-day extension of current law to allow a bipartisan compromise between the chairman and ranking member of the Finance Committee, is doing nothing but playing partisan politics with something that should be above partisan politics. We need a permanent solution.

UNANIMOUS CONSENT REQUEST—S. 2729

That is why, Madam President, I ask unanimous consent that the Committee on Finance be discharged from further consideration of S. 2729, the Ensuring the Future Physician Workforce Act, and that the Senate proceed to its immediate consideration; that the bill be read a third time and passed, the motion to reconsider be laid on the table, and that any statements relating to the measure be printed in the RECORD.

The PRESIDING OFFICER. Is there objection?

Mr. BAUCUS. Madam President, reserving the right to object, I have looked at the Senator's bill, and I must say that any objective observer would know that this is not a serious effort. It is a big warm kiss on doctors to show to them that they love doctors when, in fact, this is going nowhere. It is a $380 billion bill unpaid for. It is not a serious effort whatsoever. I regret the Senator from Texas has the audacity to bring this up.

I object.

The PRESIDING OFFICER. Objection is heard.

Mr. CORNYN. Madam President, I take exception to the chairman of the Finance Committee's insulting remarks. I would say to him that on this bill I have worked in consultation with the Texas Medical Association, which has endorsed it heartily, and what people should be insulted by are these temporary patches every 6 months that do nothing to solve the problem, that provide a political football for the majority party to play to try to take advantage in the next election, to put seniors in doubt as to our seriousness at keeping our commitment for Medicare.

I think it is the chairman of the Finance Committee and the majority leader who should be embarrassed by their objection to sensible and good-faith efforts to try to fix on a permanent basis this broken system. I regret Congress, once again—no wonder the U.S. Congress has a single-digit approval rating, with only 9 percent of the country believing it is doing a good or excellent job.

It is no secret that people are absolutely disgusted with the partisan politics that do not permit real solutions to serious problems, such as fixing Medicare once and for all, and particularly this part that is broken, the payment reimbursement system.

So I take very grave exception to the remarks of the chairman of the Finance Committee. It is he who is not serious about solving the problem. It is he who insists on partisan gamesmanship rather than real solutions. And I think it is a very sad day for the Senate.

Mr. DODD. Madam President, I rise in support of this legislation and want to thank the senior Senator from Montana for his leadership and commitment to ensuring a strong Medicare Program.

Medicare is one of the twin pillars of the retirement security compact we have with our seniors. It says that after a lifetime of hard work and paying taxes, seniors deserve the dignity of a secure retirement. That includes quality, accessible health care. At a time of skyrocketing health care and prescription drug costs, this bill strengthens our commitment to our seniors by eliminating the scheduled 10.6 percent fee cut for Medicare physicians while providing a 1.1-percent update in payments. Why is that so important, Mr. President? Because it directly impacts how we care for seniors. Because doctors are already facing this payment cut because we were prevented from acting on this legislation before recess. Because my State of Connecticut could be looking at a loss of $190 million over the next 18 months—funds that would otherwise help pay for the care of elderly and disabled patients. Nearly a half million seniors in my State alone would be affected. And because military families will also benefit from this bill because they rely on TRICARE which ties its payments to Medicare. Indeed, absent this action, we could be putting at risk health care for not only military retirees but even for those on Active Duty. For all they have given to this country, we absolutely cannot let that happen. More than 50,000 TRICARE patients in Connecticut alone are depending on us.

There are other components of this bill I strongly support as well. Included among the $4 billion in improvements for Medicare beneficiaries is assistance for low-income seniors, who need this assistance the most. This legislation also protects access to therapy services, reduces out-of-pocket costs for beneficiaries who seek mental health care, and provides important improvements for our Nation's pharmacies and rural providers.

Ultimately, this legislation sends a message to our seniors and those who serve our country—it says that a promise made will be a promise kept. With this bill, we are keeping our word to

these men and women that there is no higher priority than ensuring our seniors and military families receive the quality health care they deserve.

Lastly, it is particularly appropriate that we move to deepen our commitment to Medicare on the day one of its biggest champions returns to the Senate. Throughout our history, there has been no greater advocate for our seniors and for health care than Senator KENNEDY. He is a friend to me, but more importantly he is a friend to every American who struggles to receive the affordable, quality health care they deserve, and we are thrilled to welcome him back.

Again, I want to thank Chairman BAUCUS as well as the majority leader for their leadership and dedication.

Mr. LEVIN. Madam President, the Medicare Improvements for Patients and Providers Act, H.R. 6331, makes a number of needed changes related to Medicare reimbursement, including reimbursement for physicians' services. Due to the unwise filibuster by the minority, we missed our chance to pass this legislation before July 1, when reimbursement cuts were scheduled to take place. We now have another opportunity to do the right thing. I strongly urge the Senate to pass this legislation promptly.

Medicare physician fee schedule payments are updated each year according to a complex formula based on a Sustainable Growth Rate—SGR. Unfortunately, because of the way the formula is calculated, even if Congress prevents the cuts in a given year, scheduled reimbursements cuts are likely to increase in subsequent years unless Congress takes additional action, such as developing a permanent alternative to the SGR formula.

I support efforts to ensure that physicians receive adequate reimbursement for their services. If they do not, some physicians will not continue to provide services to Medicare beneficiaries. As a result, allowing reimbursement cuts to go into effect could pose significant access problems for many Medicare beneficiaries.

While I believe past measures to alleviate this burden on physicians have been helpful, I know from my discussions with health care providers throughout Michigan that Congress must find an alternative to the SGR. The SGR is linked not to the cost of providing health services, but to the performance of the overall economy. The cost of health care has been rising much faster than inflation. Our nation should address the rising costs of health care as part of a larger discussion on health care reform. Until and unless we discover a way to contain health care costs to inflation, we should decouple Medicare reimbursement for physicians' services from the performance of the overall economy. Reimbursement should more accurately represent the cost of providing services.

In the meantime, we need to pass this legislation, which includes, among other important provisions, an 18 month delay on Medicare reimbursement cuts for physicians' services and replaces the cut with a 1.1 percent increase in 2009. I am hopeful that the minority will end their filibuster, that the Senate will pass this legislation, and that the President will heed the will of Congress and the American people and sign this bill into law before the cuts are implemented and cause many Medicare beneficiaries to lose access to health care providers.

Mr. SPECTER. Madam President, this Medicare legislation is very important. I believe that it is vital for the Senate to take up this important measure to have open debate to give Senators an opportunity to offer amendments and to have the Senate work its will on these important questions.

As noted in previous floor statements, I have been concerned about Majority Leader REID's practice of employing a procedure known as filling the tree, which precludes Senators from offering amendments. This undercuts the basic tradition of the Senate to allow Senators to offer amendments. Regrettably, this has been a practice developed in the Senate by majority leaders on both sides of the aisle, so both Republicans and Democrats are to blame.

On June 12, 2008, I voted in favor of cloture on the motion to proceed on S. 3101, legislation similar to H.R. 6331, the Medicare Improvements for Patients and Providers Act, to prevent the reduction in Medicare payments to physicians. At that time, I was assured by Majority Leader REID that he would not make a procedural motion to fill the tree. Following the failure to obtain cloture on the motion to proceed to S. 3101, Finance Chairman BAUCUS and Ranking Member GRASSLEY began to negotiate a bipartisan bill that could be brought before the Senate. I have concerns with some provisions that may have been contained in such an agreement. However, the prospect of the Senate working its will and allowing other Senators and me to offer amendments to such a bill is more favorable than filling the amendment tree.

On June 26, 2008, the majority leader brought up H.R. 6331. The posture of the Senate was such that for the majority leader to complete action on H.R. 6331 and send it to the President before the physician payment reduction was scheduled to go into effect at the end of June, the Senate must pass the same legislation the House of Representatives passed. This is the case because the House of Representatives adjourned for the Independence Day recess prior to the Senate vote on cloture on the motion to proceed to H.R. 6331. Since the House went out of session, there was no possibility for the House to consider a Senate-amended Medicare bill. To guarantee that the same Medicare legislation would be passed by the Senate, no amendments to the legislation were permitted. By bringing this legislation up at the last minute after the House of Representatives adjourned, the majority leader prevented the opportunity to offer amendments and undermined Senate procedure.

If cloture were to have been obtained on the motion to proceed to H.R. 6331 the legislation would have been vetoed by President Bush. That veto would have resulted in a further delay, since the House would not be in session to override the veto and the scheduled physician payment reductions would go into effect at the end of June. There was an expectation that the Senate would extend the current physician payment rate for 30 days and prevent the pending reduction from going into effect. However, when this legislative extension was offered by Senate Republican Leader MCCONNELL it was objected to by Majority Leader REID. The majority leader was aware of this issue for some time and scheduling should have accommodated the amendment process. I voted against cloture because there was no opportunity to amend the legislation that came before the Senate.

On June 28, 2008, I wrote to President Bush requesting that he use his constitutional authority to call the Congress back into session so that the Senate could act on H.R. 6331 with appropriate amendments and send it back to the House for its concurrence. This would have allowed for prompt action on this important matter and prevented the payment reduction from going into effect.

On Monday, Tuesday and Wednesday of this week, I spoke with Majority Leader REID regarding today's vote on cloture on the motion to proceed to H.R. 6331. During those conversations I requested that he allow Senators to offer amendments to the legislation. On those occasions he said he would not allow amendments. During the vote, when more than 60 Senators had voted for cloture, it was not possible to preserve the principle of Senators' rights to offer amendments so I voted for cloture because I agreed with the objectives of this legislation.

I have a strong history of preventing reduced payments to physicians. In April 2003, as Chairman of the Labor, Health and Human Services, and Education Appropriations Subcommittee; I worked to reverse a 4.4 percent cut in physician fees which had gone into effect in January of that year. This $54 billion effort also provided a 1.6 percent increase. In June 2003, I introduced an amendment to the Medicare Modernization Act to provide an increase in physician payments for 2 years. This provision was agreed to and was included in the bill. This prevented decreases in physician payments in 2004 and 2005, and increased payments by 1.5 percent in each of those years. I have consistently voted in favor of increasing Medicare physician payments and will continue to support the policy, but Senators must be allowed to offer amendments and let the Senate work its will.

Mrs. FEINSTEIN. Madam President, I rise to discuss the Medicare Improvements for Patients and Providers Act, H.R. 6331. This bill makes much needed changes to the Medicare program, and will pay doctors at a rate that will allow them to continue to participate in this vital program.

Medicare is a great success story, providing retirees with a health care safety net, but the formula that determines physicians' payment levels is seriously flawed. Unless Congress takes action immediately, doctors will receive a 10.6 percent cut in their reimbursements.

The consequences of such cuts would be dire. According to the California Medical Association, more than 60 percent of California physicians say they would be forced to either stop taking new Medicare patients or leave the Medicare program altogether if these reductions occur.

The same payment rate reductions will apply for health care provided to our servicemembers and their families who receive coverage through the TRICARE program. Over 870,000 Californians and at least 8.9 million Americans depend on TRICARE for their health care. We owe these families, who have sacrificed so much for our country, access to physicians and medical care when they need it.

I voted to consider and pass this bill, because we need to block these cuts and make improvements for beneficiaries.

However, much to my dismay, this bill contains a delay on a program to competitively bid for durable medical equipment. Can you believe it? A block on competitive bidding of commonly available medical goods.

Let me tell you what this means. Medicare began a competitive bidding program for durable medical equipment on July 1 in 10 metropolitan areas across the country—including the Riverside-San Bernardino area in my home State of California.

The program enabled medical supply companies to bid on 10 products, including wheelchairs, diabetic supplies, oxygen concentrators, walkers and hospital beds, in those 10 metropolitan areas. Companies that offered the best prices were awarded contracts to supply Medicare beneficiaries with medical equipment.

As a result, seniors on Medicare in these areas can expect to pay a lot less for some of their medical supplies.

In Riverside, CA, diabetic test strips, once $37 will now be $18, and portable oxygen, which cost Riverside Medicare patients $77 per month, can now be bought for $61.

The bid prices are an average of 26 percent lower than prices set by the Centers for Medicare and Medicaid before the enactment of the competitive bidding program.

Because beneficiaries pay copayments equal to 20 percent of the cost of their healthcare and medical equipment, that savings is also felt by the elderly and disabled Americans who rely on Medicare.

Competitive bidding makes sense, because there is no good reason why Medicare or seniors should pay above-market prices for medical equipment—especially as other health care costs continue to skyrocket.

The Centers for Medicare and Medicaid discovered that it was paying $1,825 for a hospital bed that can be bought for $754 online. On the Internet, you can purchase a power wheelchair for $2,174—far less than the $4,023 Medicare pays out for the same product. z

Competitive bidding forces Medicare suppliers to compete for their customers—much like retailers do. It also helps to control costs while providing the elderly and the disabled with quality healthcare and medical supplies. Participating companies must be accredited, to ensure that Medicare beneficiaries receive high quality equipment and service.

Allowed to continue, the program is expected to save $125 million in its first year. Expanded nationwide, that number would grow to $1 billion in savings for taxpayers and Medicare beneficiaries.

But just as this pilot program gets off the ground—another 70 metropolitan areas are expected to be added in 2009—this bill endangers the program's future.

Losing bidders have complained that the selection process was flawed and have convinced some of my colleagues to support a delay of the program for another 18 months and start the selection process over.

The bill before us today would terminate the existing competitively-bid contracts and delay the program launch for a year and a half.

This should not be permitted to happen. Seniors and taxpayers deserve to pay fair prices for their medical equipment. Medicare beneficiaries in Riverside, in Cleveland, in Dallas, learned about this new program, selected new providers, and are already saving money. Stopping this new effort midstream will only lead to confusion.

We all agree that entitlement programs like Medicare need to be reformed, but if we can't change a small portion of this sprawling entitlement program, how will we ever succeed in making major reforms?

Competitive bidding is a smart way to ensure that Medicare pays reasonable rates for medical equipment at a time when medical costs are soaring. We should not ask taxpayers to fund someone else's cash cow.

While I will vote to consider and pass this bill today, I will continue to work to see that competitive bidding moves forward, and I urge my colleagues do the same. This is a matter of common sense.

Mrs. CLINTON. Madam President, today we are voting on a piece of legislation that has the potential to make a real difference for seniors, Americans with disabilities, physicians, hospitals, and pharmacies. We are voting to ensure that doctors who care for the 44 million people in Medicare and the millions of people who rely on TRICARE, the military health care system, do not see a sudden and dramatic cut in reimbursements. And we are voting to implement a series of reforms to improve our capacity to provide preventive care, to use more health information technology in our medical system, and to measure the quality of care patients receive.

We hear a lot of talk about our broken health care system in this Chamber—and on the campaign trail—by Members on both sides of the aisle. However, all too often, there have been some all too willing to lament the crisis until it comes time to address it. But the fact is, all that matters—to seniors, to people with disabilities, to our men and women in uniform—is whether we deliver on the rhetoric. That is our test in this Chamber. And that is our test with this vote.

The choice is simple. How will we address the crisis in our health care system, as costs skyrocket, coverage declines, and quality suffers? Do we continue in this race to the bottom—or do we choose a new course?

I believe we must take immediate steps to modernize and reform our health care system to control costs, increase coverage, and improve care. The goal—as I have proposed, advocated, and championed my whole adult life—is quality, affordable health care for everyone, no exceptions, no excuses. And we all look forward to the return of our friend, Senator KENNEDY, one of America's great health care champions, to help us reach this goal.

The solution will not be to cut corners while cutting funding that will drive more and more people and providers out of the health care system. The solution has not been and will never be to stick our heads in the sand to avoid the tough work of dragging our system of care into the 21st century.

The solution is tougher—and more complex—but no less real: comprehensive reform to provide coverage for every American that emphasizes prevention, measurable improvements in quality, and a modernized system to dramatically improve efficiency and reduce errors. And we will achieve it by asking everyone to be part of this solution: patients, providers, insurance companies, employers, and, yes, the government.

That is why I hope more of my Republican colleagues will join the growing bipartisan majority in the House and Senate to support this legislation and end this Medicare blockade—an obstruction that survived by a single vote—which stands between patients and their physicians, and between this chamber and demonstrable progress in Medicare.

Here is why this legislation is so critical. First, unless we act, the 10.6 percent cut in payment to physicians will

compromise care for seniors, Americans with disabilities and—though this is largely unknown—men and women who have served in our Nation's military. TRICARE sets its physician reimbursement rates according to Medicare. So a 10.6-percent cut in Medicare is a 10.6-percent cut in TRICARE.

The consequences may be catastrophic. A recent survey by the American Medical Association found that 60 percent of physicians would limit new Medicare patients if this cut is allowed. Almost 9 million people who have served in the military would face the prospect of newly limited access to medical care, including more than 180,000 in New York.

The answer is not haphazard cuts and temporary formula fixes. The answer is a comprehensive, permanent solution which reflects the costs of doing business for providers—as well as the goals we all share for fixing the incentives in the health care system and controlling costs by improving care—not limiting it.

And preventing this cut is only the beginning. I am proud that we have included a number of important reforms I have championed that will help us chart a new course for Medicare and our health care system: We have included a provision to cover new preventive care recommended by the U.S. Preventive Services Task Force, a proposal for which I have advocated and which I believe should be part of our solution to achieve health care for everyone. Coverage for screenings for osteoporosis, breast cancer, or high blood pressure, for example, will help detect illness at the earliest stages, before becoming life-threatening and more costly.

I am proud that we have taken an important step in health information technology, requiring electronic prescribing by 2011. That will reduce errors dramatically. If all hospitals used a computerized order entry system we would reduce adverse drug reactions by an estimated 200,000 each year and save $1 billion annually. Health information technology, which I have proposed and hope to pass through the Senate soon, will allow us to make giant leaps in our health care system to cut errors, improve care, and discover new treatments—while protecting patient privacy and safety and dramatically reducing costs.

The bill also extends the Medicare Physician Quality Reporting Initiative and provides for the endorsement of quality measures, as I have long championed. In fact, the first bipartisan health IT legislation I introduced with Senator Bill Frist in 2005 included this idea and it remains in the legislation that I have cosponsored with Chairman KENNEDY, Senator ENZI, and Senator HATCH. Linking quality with coverage is essential. Today, we don't know what we don't know. With new data we can find new ways to treat illnesses and new ways to improve the care we provide.

We have previously failed by one vote. One vote between improving care or undermining it. One vote that can make the difference between solving problems in our health care system or making matters worse. This is not about politics. This is about the real people whose health and lives will be affected by our votes today. This is about the far reaching consequences of our decision in this Chamber.

I have met people across New York and our country who cannot find the medical care—or afford the health care—they need.

Mothers who whisper to me in tears, terrified that their children will get sick because they lost their insurance. Nurses who feel like each day is a deluge, as patient loads rise. Doctors forced to see more and more patients—with less and less time to do their jobs and more and more paperwork piling up. Seniors with multiple chronic illnesses who have trouble juggling the recommendations and medications from multiple health care providers.

And hospitals like A.O. Fox Memorial Hospital in Oneonta, NY, which stands to lose hundreds of thousands of dollars it cannot afford to lose. Or Bassett Healthcare in Cooperstown, NY, that stands to lose about a million dollars.

These are local hospitals struggling to provide care as that care is assaulted on all sides: rising costs, declining reimbursements, more uninsured patients walking through the emergency room doors. It would be a disgrace if these hospitals looked to us for solutions—and found that with these cuts, we were part of the problem.

These are the stakes and this is our test. I am grateful to my colleagues who have labored on this legislation and I urge my Republican colleagues to join us. And I will continue to do all I can to be champion for the people across New York and the country who feel like they do not have a voice, who look to us, who are counting on us, who depend upon us. I will always stand with them—and I urge my colleagues to stand with us.

Mr. AKAKA. Madam President, we must enact the Medicare Improvements for Patients and Providers Act of 2008. This legislation is vital to ensuring that Medicare and TRICARE beneficiaries have continued access to health care. The bill will also enhance Medicare benefits. In addition, the legislation will provide additional support for Hawaii hospitals that care for the uninsured and Medicaid beneficiaries.

I hope that my colleagues who previously opposed this legislation had an opportunity to meet with their physicians, beneficiaries, and military families during the recess. If so, I hope my colleagues now understand how tremendously important it is to seniors, individuals with disabilities, and members of our armed services and their families that this legislation be enacted to protect their access to health care.

The act will maintain Medicare physician payment rates for 2008 and provide a slight increase in 2009. If this legislation again fails to pass, doctors will be subject to a 10.6 percent cut in Medicare reimbursements for the rest of the year. This dramatic cut could severely limit access to health care for our troops and their families because TRICARE reimbursement rates are linked to Medicare reimbursement rates. Rising costs and difficulty in recruiting and retaining qualified health professionals make it essential that we improve reimbursements to ensure that Medicare and TRICARE beneficiaries have access to health care services.

The act will enhance Medicare benefits. It increases coverage for preventive health care services and makes mental health care more affordable. In addition, the act provides additional help for low-income seniors to obtain the health care services that they need.

Finally, the legislation will provide much needed relief for Hawaii hospitals. The legislation will extend Medicaid Disproportionate Share, DSH, allotments for Hawaii until December 31, 2009.

Hawaii hospitals are struggling to meet the increasing demands placed on them by a growing number of uninsured patients and rising costs. Hawaii and Tennessee are the only two States that do not have permanent DSH allotments. The Balanced Budget Act of 1997 created specific DSH allotments for each State based on their actual DSH expenditures for FY 1995. In 1994, Hawaii implemented the QUEST demonstration program that was designed to reduce the number of uninsured and improve access to health care. The prior Medicaid DSH program was incorporated into QUEST. As a result of the demonstration program, Hawaii did not have DSH expenditures in 1995 and was not provided a DSH allotment.

The Medicare, Medicaid, and SCHIP Benefits Improvement and Protection Act of 2000 made further changes to the DSH program, which included the establishment of a floor for DSH allotments. States without allotments were again left out.

The Medicare Prescription Drug, Improvement, and Modernization Act of 2003 made additional changes to the DSH program. This included an increase in DSH allotments for low DSH States. Again, States lacking allotments were left out.

In the Tax Relief and Health Care Act of 2006, DSH allotments were finally provided for Hawaii and Tennessee for 2007. The act included a $10 million Medicaid DSH allotment for Hawaii for 2007. The Medicare, Medicaid, and SCHIP Extension Act of 2007 extended the DSH allotments for Hawaii and Tennessee until June 30, 2008. This provided an additional $7.5 million for a Hawaii DSH allotment.

This additional extension in the Medicare Improvements for Patients and Providers Act of 2008 authorizes

the submission by the State of Hawaii of a State plan amendment covering a DSH payment methodology to hospitals which is consistent with the requirements of existing law relating to DSH payments. The purpose of providing a DSH allotment for Hawaii is to provide additional funding to the State of Hawaii to permit a greater contribution toward the uncompensated costs of hospitals that are providing indigent care. It is not meant to alter existing arrangements between the State of Hawaii and the Centers for Medicare and Medicaid Services, CMS, or to reduce in any way the level of Federal funding for Hawaii's QUEST program. This act will provide $15 million for Hawaii DSH allotments through December 31, 2009.

These DSH resources will strengthen the ability of our providers to meet the increasing health care needs of our communities. All States need to benefit from the DSH program. This legislation will make sure that Hawaii and Tennessee continue to have Medicaid DSH assistance.

I will continue to work with Chairman BAUCUS, Ranking Member GRASSLEY, Senators ALEXANDER, CORKER and INOUYE to permanently restore allotments for Hawaii and Tennessee. However, we need to enact this legislation to continue to help our struggling hospitals.

We must enact this legislation. It will protect access to health care for seniors, individuals with disabilities, and members of our armed services and their families. The bill will improve Medicare benefits and provide much needed financial assistance for hospitals in Hawaii that care for the uninsured and Medicaid beneficiaries.

Mr. CARDIN. Madam President, our vote today on H.R. 6331 carries real and immediate consequences for people who depend on Medicare. Action on this legislation is mandatory now because, 8 days ago, the temporary fix we passed at the end of last year expired. The cuts are in effect.

Next Tuesday, when the Centers for Medicare and Medicaid Services begins paying claims for services rendered after June 30, 2008, payments will be cut unless we pass this measure.

Because I return home every evening to my State, I interact frequently with Maryland providers. They cannot sustain a nearly 11-percent cut in their Medicare payments; they and many of their colleagues will stop accepting new Medicare patients unless we pass this bill.

The pending cuts are the result of a flawed system that pegs provider reimbursement to the growth of the Nation's GDP. It was created by the 1997 Balanced Budget Act as a way to rein in dramatic growth in Medicare spending on physician services. But this system, known as SGR, has not worked as intended. In fact, every year since 2001, Congress has had to act to prevent the cuts from going into effect. We know that the SGR formula must be repealed.

I have introduced legislation in past years to eliminate SGR and replace it with a system that reimburses based on the actual reasonable costs of providing care. The bill that was passed overwhelmingly by the House, H.R. 6331, provides another temporary fix through December 31, 2009. That is sufficient time for the next Congress, working with a new administration and the provider community, to develop a new mechanism.

But although ''doctor fix'' is the shorthand often used, this bill is far more than that, and our failure to pass it has repercussions far beyond physician offices. Another provision that expired on June 30 is the exceptions process for outpatient rehabilitation services. The 1997 Balanced Budget Act imposed dollar limits of $1,500 on Part B therapy services—one cap for physical and speech-language therapy, and another for occupational therapy. They are adjusted annually for inflation and are now at $1,810. I was a member of the Ways and Means Health Subcommittee at the time. Congress held no hearings on this issue to examine how the caps might affect patient care. The authors of the provision had no policy justification for imposing them, and the dollar amount was arbitrary. These caps were imposed for purely budgetary reasons. They were a crude budget-cutting measure designed to deliver savings—$1.7 billion over 5 years.

This misguided policy ignored clinical needs and it restricted care for the most frail patients—such as those who are recovering from stroke or hip fracture, and those with multiple injuries in a given year.

And because the dollar limits are not adjusted for cost variations across the country, seniors in high cost areas reach their caps even sooner.

The University of Maryland's Shock Trauma Center was the first such unit in the Nation. It is a world-renowned leader in caring for critically injured patients. They see patients with extensive fractures, severe burns, spinal cord and brain injuries, and other debilitating conditions. These patients require lengthy therapy sessions to restore basic functioning. They cannot be rehabilitated for $1,810 a year.

The therapy caps actually went into effect once before, on January 1, 1999, and they had serious consequences for beneficiaries. By April, many patients in skilled nursing facilities had exceeded the limits and were unable to receive necessary care. The administration recognized the danger of this provision, stating:

> The limits will reduce the amount of therapy services paid for by Medicare. The patients most affected are likely to be those with diagnoses such as stroke and amputation, where the number of therapy visits needed by a patient may exceed those that can be reimbursed by Medicare under the statutory limits.

That year, I joined the now-junior Senator from Nevada, JOHN ENSIGN, to introduce a bill to repeal the caps. We had significant bipartisan support and at the end of 1999, Congress delayed implementation for 2 years. Since that time, Congress has acted several times to prevent the caps from taking effect.

In 2006, Congress created an exceptions process that would allow beneficiaries needing care above the statutory caps to receive those services. It was the right thing to do. This process has worked well. Medicare is saving money and patients are getting needed care. In February, the Centers for Medicare and Medicaid Services released a study concluding that:

> The exception process that allows beneficiaries who need therapy to get that therapy, even if the cost goes beyond the cap, has worked to control cost growth. This study reveals that from Calendar Year 2004 through 2006, although the total number of therapy users continued to increase by 3.5 percent the overall expenditures actually decreased by 4.7 percent.
>
> This suggests that the exceptions process in CY 2006 may have satisfied to some extent the Congressional intent to assure access to medically necessary services while controlling the growth in expenditures.

The CMS study shows that the exceptions process works to control costs, yet still assures access for the more than 4.4 million beneficiaries who need additional care. The exceptions process allowed them to get the therapy they need to recover, function optimally, and live more productive lives. It allowed them to learn to cook, clean, and care for themselves after a stroke, to walk correctly and strongly after a hip replacement, and to speak and communicate after cancer surgery. But as of Tuesday, July 1, the process has expired. Section 141 of the bill we are voting on today continues the exceptions process through December 31, 2009.

This provision takes up just two lines of the bill. It is a small provision, but it has a major impact on seniors.

The story of Steve Kinsey and his patients illustrates why we must pass this bill without further delay.

Steve operates Hereford Physical Therapy in Baltimore County. He is anxious to know what the Senate will do this afternoon and so are the seniors he cares for. Steve's practice has about 9,500 patient visits each year, and one-fifth of them are covered by Medicare. He told me about two patients who are waiting for the Senate to act.

The first is a 72-year-old gentleman. He is a wheelchair-bound quadriplegic who needs physical therapy to keep up his strength. He qualified through the exceptions process, and so, although he exceeded the $1,810 cap in March, he has been able to receive therapy 2 days every other week to maintain his level of function.

The second patient is an 83-year-old woman who had a total knee replacement earlier this year. She received 20 visits and was under the cap, until a few weeks later when she fell and fractured her hip.

The cost of her care exceeded the cap 6 weeks ago, but after qualifying through the exceptions process, she has been able to continue treatment.

Because of the actions of a few Senators, as of Tuesday, July 1, these two Medicare beneficiaries can no longer receive care.

On July 1, CMS told providers: (1), that the exceptions process expired on June 30, 2008; (2), not to submit any claims with the code for exceptions because they will be automatically rejected; (3), that providers can check a CMS Web site to determine the amount of services their patients have received so far this year; and; (4), that patients who have reached the caps can go to an outpatient hospital department for care or pay out-of-pocket.

Because the exceptions process was in place for the first 6 months of this year, patients who have already gone beyond the cap—the patients most in need of care—must stop therapy or pay for it themselves. The average charge is about $80 for a 45-minute session. This is wrong.

If we do not reinstate the exceptions process as the bill before us would do, these individuals who need more care will be harmed. They received appropriate therapy under appropriate rules, but that does not matter: On July 1, they were effectively cut off from services that 8 days ago they were deemed eligible for. This is unfair and it is harmful.

Let's not forget that therapy services are also paid under the Medicare fee schedule, so the 10.6 percent cut will also apply to these services as well.

Now, as CMS stated, there is a last resort—to go to the outpatient department of a hospital for additional care. But Steve has learned that the two hospitals near his practice—GBMC and St. Joseph's—are turning away new patients because they don't have the capacity to see them.

Because of the shortage of therapists in Maryland and in other States, hospitals are already overloaded. So, Steve has 10 patients who are waiting at home for him to call and say they can come back in for therapy. They have no where else to go for treatment unless they pay out-of-pocket. They can't afford that.

Outpatient therapy services are paid under Medicare Part B. The people waiting for Steve's call are seniors who worked hard to qualify for Part A coverage and who are paying premiums for Part B. Working Americans—taxpayers—who do not yet qualify for Medicare, are paying to subsidize Part B premiums. The American people as a whole, not only providers and beneficiaries, should be outraged that a minority of the Senate is preventing us from moving forward on this legislation.

The 43 million seniors and persons with disabilities who rely on Medicare deserve a program that meets their health care needs. Our goal should be to ensure that Medicare provides comprehensive, affordable, quality care.

The bill also includes important beneficiary improvements. In 1997, I worked in a bipartisan way to add to the Balanced Budget Act the first-ever package of preventive benefits to the traditional Medicare Program. That was 11 years ago. At that time, the members of the Ways and Means Committee recognized what medical professionals had long known—that prevention saves lives and reduces overall health care costs.

Preventive services such as mammograms and colonoscopies are vital tools in the fight against serious disease. The earlier that breast and colon cancer are detected, the greater the odds of survival. For example, when caught in the first stages, the 5-year survival rate for breast cancer is 98 percent. But if the cancer has spread, the survival rate drops to 26 percent. If colon cancer is detected in its first stage, the survival rate is 90 percent, but only 10 percent if found when it is most advanced.

Seniors are at particular risk for cancer. In fact, the single greatest risk factor for colorectal cancer is being over the age of 50—when more than 90 percent of cases are diagnosed.

Sixty percent of all new cancer diagnoses and 70 percent of all cancer-related deaths are in the 65 and older population. Cancer is the leading cause of death among Americans aged 60 to 79 and the second leading cause of death for those over age 80. So preventing cancer is essential to achieving improved health outcomes for seniors. Screenings are crucial in this fight.

In addition to improving survival rates, early detection can reduce Medicare's costs. Under Chairman CONRAD's leadership on the Budget Committee, we have had fruitful debates about the long-term solvency of Medicare. A more aggressive focus on prevention will help produce a healthier Medicare Program.

Medicare will pay on average $300 for a colonoscopy, but if the patient is diagnosed after the colon cancer has metastasized, the costs of I care can exceed $58,000.

There is no question that these vital screenings can produce better and more cost-effective health care.

The 1997 law established place improved coverage for breast cancer screenings, examinations for cervical, prostate, and colorectal cancer, diabetes self-management training services and supplies, and bone mass measurement for osteoporosis. Since then, Congress has added screening for glaucoma, cardiovascular screening blood tests, ultrasound screening for aortic aneurysm, flu shots, and medical nutrition therapy services. In addition, in 2003, a Welcome to Medicare Physical examination was added as a one-time benefit for new Medicare enrollees available during the first 6 months of eligibility.

But we can only save lives and money if seniors actually use these benefits. Unfortunately, the participation rate for the Welcome to Medicare physical and some of the screenings is very low. I have spoken with primary care physicians across my State of Maryland about this. One problem is the requirement to satisfy the annual deductible and co pays for these services.

Most colonoscopies are done in hospital outpatient departments, where their copay is 25 percent or approximately $85. Our seniors have the highest out-of-pocket costs of any age group and they will forgo these services if cost is a barrier.

The other barrier to participation is the limited 6-month eligibility period for the one-time physical examination. By the time most seniors become aware of the benefit, the eligibility period has expired. In many other cases, it can take more than 6 months to schedule an appointment for the physical exam and by that time, the patients are no longer eligible for coverage.

I have introduced legislation to eliminate the copays and deductibles for preventive services and to extend the eligibility for the Welcome to Medicare physical from 6 months to 1 year. My bill would also eliminate the time consuming and inefficient requirement that Congress pass legislation each time a new screening is determined to be effective in detecting and preventing disease in the Medicare population.

It would empower the Secretary of Health and Human Services to add ''additional preventive services'' to the list of covered services. They must meet a three part test: (1) they must be reasonable and necessary for the prevention or early detection of an illness; (2) they must be recommended by the U.S. preventive Services Task Force, and (3) they must be appropriate for the Medicare beneficiary population.

H.R. 6331 incorporates several elements of my bill in the very first section. It will waive the deductible for the physical examination, extend the eligibility period from 6 months to 1 year, and allow the Secretary to expand the list of covered benefits.

This bill will also help low income seniors by raising asset test thresholds in the Medicare savings programs and targeting assistance to the seniors who most need it. It extends and improves assistance programs for seniors with incomes below $14,040 a year, including the QI program, which pays Part B premiums for low-income seniors who don't qualify for Medicaid.

As this Congress continues to make progress toward passing a comprehensive mental health parity bill, this bill provides mental health parity for Medicare beneficiaries, moving their copayments from 50 percent to 20 percent gradually over 6 years. Depression, bipolar disorder, and other mental illnesses are prevalent among seniors, and yet fewer than half receive the treatment they need. This provision will help them get that treatment.

It will also ensure that a category of drugs called ''benzodiazepines'' are covered by Medicare Part D. When Part D took effect on January 1, 2006, millions

of beneficiaries found that the medicines they took were not covered by the new law. A little-known provision in the bill actually excluded from coverage an entire class of drugs called benzodiazepines. These are anti-anxiety medicines used to manage several conditions, including acute anxiety, seizures, and muscle spasms. The category includes Xanax, Valium, and Ativan. Most are available as generics.

The current-law exclusion has led to health complications for beneficiaries, unnecessary complexity for pharmacists, and additional red tape for the States. Beneficiaries who are not eligible for Medicaid have had to shoulder the entire cost of these drugs or substitute other less effective drugs. In 2005, I first introduced legislation that would add benzodiazepines to the categories of prescription drugs covered by Medicare Part D and Medicare Advantage plans.

This provision is essential for our seniors; without it, dual eligibles would have to rely on continued Medicaid coverage for benzodiazepines. Medicare beneficiaries who are not eligible for Medicaid will have to continue to pay out-of-pocket for them. For those who cannot afford the expense, their doctors would have to use alternative medicines that may be less effective, more toxic, and more addictive. This is a significant improvement for our seniors who are enrolled in Part D and for the fiscal health of our States.

This bill will also help our community pharmacies. I have heard from pharmacies throughout Maryland who cannot receive prompt reimbursement from private plans. This bill requires plans to pay them within 14 days of receiving a clean claim. It also requires plans to update their price lists weekly so that pharmacies have accurate data about what they should be reimbursed.

H.R. 6331 is paid for by small reforms to the Medicare Advantage program, in particular to private fee-for-service plans. The nonpartisan Medicare Payment Advisory Commission, MedPAC, has recommended that we equalize payments between Medicare Advantage and traditional Medicare.

As we discuss the solvency of the Medicare Program, we must take note that private health plans are not saving the Federal Government money. In fact, they are costing us money. I was a member of the Ways and Means Committee when health plans approached us with an offer.

If the Federal Government would pay them 95 percent of what we were spending on the traditional Medicare Program, they would create efficiencies through managed care—efficiencies that they said were lacking in traditional Medicare—that would save the Federal Government billions of dollars each year. They promised to provide enhanced coverage, meaning extra benefits as well as all the services covered by traditional Medicare, for 95 percent of the cost of fee for service. Congress gave them a chance to do just that.

Instead, what we saw across the country was cherry-picking of younger, healthier seniors. Each time Congress indicated that it would roll back their overpayments to a more reasonable level, they responded by pulling out of markets. In Maryland, the number of plans declined over a 3-year period from eight to one, abandoning thousands of seniors. Since 2003, when payments were substantially increased, the number of plans has steadily increased as well, but at too high a cost to beneficiaries, taxpayers, and the future of the Medicare Program.

Right now, these plans are paid up to 19 percent more than the amount that we would pay if these seniors were in fee-for-service Medicare. Over 10 years, we are overpaying them by more than $150 billion.

That is enough money to fund significant valuable improvements in the overall Medicare Program, or to permanently repeal the sustainable growth rate formula. It is time, for the health of the Medicare Program, to pay these plans appropriately. This bill would make small adjustments to these overpayments as well as prohibit the abusive marketing practices, such as cold calling, door-to-door sales, and offering incentives such as free meals, which have led to many seniors being enrolled in private plans without their knowledge or consent.

Mr. President, this is a balanced and responsible bill that addresses immediate reimbursement concerns while setting the foundation for a higher quality, more cost-effective Medicare Program.

The time to act is now. With the support of just one more Senator, we can pass an urgently needed bill and restore the promise of improved access, adequate reimbursement, low-income assistance, and additional needed benefits to the seniors who depend on Medicare. I urge my colleagues to support this legislation,

MEDICAL HOME DEMONSTRATION

Mr. BINGAMAN. I rise today in support of legislation that will avert a 10.6 percent reduction in payments to providers who care for our Nation's Medicare beneficiaries. It is critical that we pass this legislation today in order to ensure that seniors, who rely on Medicare, will continue to have access to high quality health care.

I also wanted to take this opportunity to engage briefly in a colloquy with Senators HARKIN, MURKOWSKI, and COLLINS about a provision in this bill relating to an expansion of the medical home demonstration.

This bill contains a provision that gives the Secretary of Health and Human Services discretion to expand the Medicare medical home demonstration initially enacted as part of the Tax Relief and Health Care Act of 2006. I am troubled that the current demonstration does not permit nurse practitioners and other non-physician providers to lead medical home demonstrations. I believe Congress must include these providers in the demonstration.

In my home State of New Mexico, nurse practitioners have been able to practice independently and with full prescriptive authority since 1993. This recognition of their ability to function as independent primary care providers has allowed them to provide care for the most needy of our citizens. New Mexico is a very rural State. In some parts of my State, nurse practitioners are the only primary care providers available. They already serve as medical home providers for many of our citizens and without them many families would have no health care at all.

A June 2008 MedPAC report on primary care includes a discussion of the value of medical home demonstrations, stating ''Medical practices led by physicians, nurse practitioners, and physician assistants are a logical place to turn for these services, particularly practices with strong nursing and other dedicated staff support . . .'' In that report, MedPAC recommended seven requirements for a primary care provider wishing to lead a medical home demonstration. The provider must: furnish primary care, including coordinating appropriate preventive, maintenance, and acute health services; conduct care management; use health information technology for active clinical decision support; have a formal quality improvement program; maintain 24-hour patient communication and rapid access; keep up-to-date records of beneficiaries' advance directives; and maintain a written understanding with each beneficiary designating the provider as a medical home.

I firmly believe that nurse practitioners, or other non-physician providers meeting these standards should be able to lead a medical home demonstration. Furthermore, nurse practitioners epitomize the delivery of high quality, cost-effective primary care that is crucial to the medical homes model.

At a time when primary care providers are so greatly needed, the exclusion of more than 700 nurse practitioners in New Mexico—and more than 137,000 nurse practitioners across this country runs counter to the need for more qualified primary care providers.

Mr. HARKIN. I want to thank my distinguished colleague for raising this issue, which is also a great concern of mine. I am also pleased to support the legislation pending before the Senate today, which will ensure that Iowa's seniors continue to have access to their health care professionals. Iowa, like New Mexico, is a rural State where approximately 1,300 nurse practitioners provide critical access to care in Iowa's underserved areas. As you know, rural America has a higher proportion of elderly Americans than nonrural areas. In addition, Medicare providers face several unique challenges in rural America that make ensuring access to health care even more difficult. As part

of our expansion of the Secretary's authority, I would encourage the Secretary to allow nurse practitioners to fully participate and lead medical home demonstrations.

Approximately 90 percent of nurse practitioners in rural areas do primary care. Approximately one-third of nurse practitioners have practices where more than 50 percent of patients would be classified as ''vulnerable populations''.

This year, Iowa's State legislature passed legislation to use the medical home model to reduce disparities in health care access, delivery and health care outcomes and, ultimately, allow each Iowan to have access to health care. This legislation includes nurse practitioners as medical home leaders who are responsible for providing for appropriate patient care, coordinating specialty care and guaranteeing a quality of care based in evidence, and fully coordinated with patient and family.

Ms. MURKOWSKI. I want to thank my colleagues for engaging in this colloquy and raising this issue, which is also of importance to my home State of Alaska. Like New Mexico and Iowa, Alaska is a rural State where approximately 600 nurse practitioners provide critical access to care in Alaska underserved areas. As a matter of fact some areas of Alaska are so rural and isolated they are primarily served by providers who use airplanes as their mode of transportation. Among these providers are nurse practitioners, who often are the most accessible providers in certain areas in Alaska.

Alaska has one of the highest numbers of nurse practitioners per capita of any other State. Nurse practitioners function as partners in the healthcare of their patients, so that, in addition to clinical services, nurse practitioners focus on health promotion, disease prevention and health education and counseling, guiding patients to make smarter health and lifestyle choices.

NPs provide healthcare to people of all ages, all over the State of Alaska, in diverse healthcare settings such as private offices, community clinics, hospitals, long-term care facilities, schools, and health departments, and about 40 percent of nurse practitioners in Alaska practice in rural settings, outside the major cities in Alaska, and an estimated 25 percent practice in medically underserved areas of Alaska.

For these reasons and to allow Alaskans the easiest access to a provider in the medical home demonstration, I would encourage the Secretary to allow nurse practitioners to fully participate and lead medical home demonstrations.

Ms. COLLINS. Madam President, I rise in strong support of the outstanding work of our Nation's nurse practitioners—most especially the 850 or so nurse practitioners in Maine who have practiced independently since the mid-1990s. Nurse practitioners in Maine are credentialed as participating providers and serve as primary care providers in managed care organizations in my State.

Similar to my colleagues from New Mexico, Iowa and Alaska, a large percentage of Mainers live in rural areas. As such, residents are often a considerable distance from health care facilities and may be hindered from getting care because of transportation and other obstacles. Nurse practitioners fill the void for high quality primary health care in our underserved areas.

We need to encourage medical home demonstrations that allow nurse practitioners to fully participate in these models.

Mr. BINGAMAN. I thank my fellow Senators for joining me to discuss this important issue.

The PRESIDING OFFICER. Who yields time?

Mr. GRASSLEY. Madam President, I will yield 3 minutes to the Senator from Oklahoma.

The PRESIDING OFFICER. The Senator from Oklahoma is recognized for 3 minutes.

Mr. COBURN. Madam President, as a practicing physician in the Senate, I remember the last time a Medicare fix came through and we had the problems associated with it. I would make four points about what is going on here.

No. 1, if this bill goes through, 2.3 million senior citizens who are on Medicare Advantage will lose Medicare Advantage. Madam President, 2.3 million will lose. Not only will that happen, but also all Medicare patients will pay $200 million more per year in copays for durable medical equipment. So we have a bill that is supposedly going to do the doctor fix, but under the sleight of hand in the dark of night we are going to raise the fees on Medicare patients by $200 million for durable medical equipment, and we are going to tell 2.3 million Medicare patients who are very pleased with the program they have now that they cannot have that anymore.

We have two choices in health care in this country. We can let the Government run it all—which this is a step toward moving toward that—or we can allow the ingenuity and creativity of this country through a market-based phenomenon—which is what Medicare Advantage is going to—to create an allocation of scarce resources on the basis of quality, great outcome, and patient choice. There is very limited patient choice now because doctors do not want to take Medicare patients because the reimbursements are so low. Well, guess where they will take it. Where the reimbursements are higher because their costs are going like this, and their reimbursements are going down.

So remember this: If, in fact, you vote for this bill, 2.3 million Medicare patients on Medicare Advantage will lose that coverage, and $200 million in additional copays will fall to all Medicare patients across the board in terms of their copay for durable medical equipment.

We can fix this problem. We ought to fix it right. This is not the way to fix it.

I yield back.

The PRESIDING OFFICER. Who yields time?

The Senator from New York.

Mr. SCHUMER. Madam President, are we in a quorum call?

The PRESIDING OFFICER. No, we are not.

Mr. SCHUMER. Madam President, I rise in strong support of this legislation vitally needed from one end of the country to the other. Ask doctors who will face a significant cut, ask pharmacists who are going bankrupt because they are not being paid appropriately, and ask, most of all, our Medicare patients who will not have the ability to visit doctor after doctor after doctor.

This legislation is essential, and it is compromise legislation. The other side says ''compromise''? Sixty percent of the cuts come from medical education—something near and dear to me and my State. Only 40 percent comes from fee for service. Yet they say: Compromise. Do you know what compromise is to the other side, those opposed here? They want it all. All the money should come out of IME, none out of fee for service, or they will not budge.

Who is hurt when they play this political game? Millions of senior citizens. I would prefer to have all the money come out of fee for service. So would Chairman RANGEL. So would many others from States such as mine that have medical education. But we are willing to go part of the way for the seniors.

I say to my colleagues on the other side of the aisle: Substantively and politically, this is among the worst votes that you will take if you oppose this legislation; among the very worst both substantively because it hurts our seniors and cripples Medicare, and politically because people really care about this. I have never seen organizations such as the AMA, the pharmacists, and the AARP in unison.

So I would urge at least one of my colleagues from across the aisle to reconsider for the sake of those who work so hard in the health care field and, most of all, for the sake of our senior citizens.

This bill is essential to keep things going in Medicare. I know there may be some who want to get rid of Medicare, but most of us want to fight to preserve it. If you care about Medicare, if you care about seniors, if you care about fair pay for pharmacists and doctors, the only vote is yes.

I yield the floor.

Mr. McCONNELL. Madam President, how much time remains on this side?

The PRESIDING OFFICER. There is 4½ minutes left of the initial time that was designated for the chair and ranking member of the Finance Committee. Then there is 20 minutes of time divided between the minority leader and

the majority leader following that time.

Mr. MCCONNELL. All right. Madam President, I ask unanimous consent that the Senator from Florida have 4 minutes of my time that is remaining.

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

The Senator from Florida.

Mr. MARTINEZ. Madam President, this is indeed an important debate we are having about a very important issue to many in my State of Florida. There is no doubt that my State has a large population of people who depend on Medicare for their health care. This is an important matter to them.

We also have, of course, the doctors who deliver health care who also have a concern, a great concern, about a potential cut at a time when everything else in their lives is rising—an unfair cut. The fact is, we know doctors are tremendously stressed today because of many issues in their practice. The fact is that hard-working doctors do not deserve a pay cut. I know whoever created this condition years ago was well-intentioned, but it has not worked and it does not work. Doctors should not be expected to come before the Congress hat in hand each and every year or 18 months to ask for yet another extension or a deferral of a pay cut. The next cut in pay, which would come 18 months from when we do the right thing and move beyond the politics and get something done, will be a 20-percent cut—unsustainable.

I would say the real answer for the long term is to fix Medicare and to fix the doctors' pay problem. Unfortunately, we have not been able to come to an agreement. I daresay I don't believe we will today either. So I believe the real answer to the issue is to extend the program temporarily. We have not done so in the past, even though it has been requested. I wonder why.

The fact is that to date, the Congress has passed 28 temporary extensions for programs where agreement has yet to be reached so these programs can continue without interruption during the time those differences are ironed out. These extensions are commonplace, as demonstrated by the 28 temporary extensions during this Congress alone. In fact, at the time the majority objected to the first request for a short-term extension, Medicare payment rates were already operating under a 10-month temporary extension from last December.

So I would say it is time for us to stop the political ''gotcha'' games and allow the doctors to be assured that they will not be suffering a pay cut while we get to a bipartisan agreement because it is important that this be a bipartisan effort and that we come at it in a bipartisan way with ideas from both sides of the aisle. We can do that. While that takes place, I believe the only way to proceed would be for there to be a 30-day extension that can allow uninterrupted payments to continue. The differences can be worked out, as they always are in this environment, although not always on a timely basis, and then we can move forward.

UNANIMOUS CONSENT REQUEST

At this time, I ask unanimous consent that if cloture is not invoked on the motion to proceed to the House-passed bill, the Senate proceed to the immediate consideration of a Senate bill which I will send to the desk, and it is clean, a 1-month extension of the Medicare payments bill. I further ask unanimous consent that there be 15 minutes of debate equally divided and that following the use or yielding back of time, the bill be read a third time and the Senate proceed to a vote on passage without any intervening action or debate.

Mr. REID. Madam President, reserving the right to object, in the 10 minutes I have before the vote, I will address in some detail why this is such a fallacious idea, and I object.

The PRESIDING OFFICER. Objection is heard.

Mr. MCCONNELL. Madam President, the issue before us is the physician payment update, and on that point we don't disagree at all. Everyone agrees we should prevent the cut and preserve seniors' access to care under the Medicare Program.

Republicans have been flexible on finding a solution. When it was clear that the Senate wouldn't move to the last partisan bill that was proposed, I asked my friends on the other side to work with us on a bipartisan compromise with Senator GRASSLEY and Senator BAUCUS. Both have a long history on finding workable compromises on very tough issues. If that wasn't possible, we proposed an 18-month extension of current law. Then we proposed a 1-month extension. There is no good reason patients and physicians should suffer while Congress works out its disagreements. The majority objected to all of these proposals out of hand. They weren't interested. They even rejected the opportunity to have a single amendment on the bill—no amendments.

So now, rather than resolving the problem in a way that is acceptable to everyone and in a form the President will sign, we are no closer to a solution for seniors and their doctors than we were 2 weeks ago. Rather than passing a short-term safety net bill while we get a good, bipartisan bill to protect 2 million seniors from losing their private Medicare Advantage plans, the majority chose an all-or-nothing approach.

It seems to me that if we can't resolve policy issues today, we should at least agree to a short-term extension of existing law, which my good friend from Florida just offered, including a bipartisan proposal to delay competitive bidding that is identical to a provision in the House bill that the other side has already voted for.

So let's sum it up. The Democrats don't want a bipartisan compromise. They don't want a long-term extension of current law. They don't want a short-term extension of current law. Yet they are not to blame for this Medicare cut going into effect? We know how to prevent this cut from going into effect, but we can't stop it. We can't protect the doctors, and we can't protect access of choice for seniors if the Democrats won't let us.

How much time remains on this side?

The PRESIDING OFFICER. There is 8 minutes 14 seconds remaining.

The Senator from Iowa.

Mr. GRASSLEY. Madam President, I wish to review some facts.

At the end of last year, we agreed to a short-term Medicare extension so that we could complete work on a bipartisan Medicare package this year that would fill out the 2 years that we previously had planned to do it. We were very close to a deal then and needed time to finish that work, so that is why we did the short-term extension. Both sides agreed that we would work quickly to get a bill that could be signed into law. Unfortunately, that effort has been intentionally derailed by the majority's desire to play politics with Medicare.

The fact is that the majority has twice walked away from good-faith, bipartisan negotiations. The fact is that we had been working for months before the rug was pulled. The fact is that we had actually completed that bipartisan deal 2 weeks ago yesterday, about 11 o'clock in the morning. It was a deal that would be signed into law—in other words, not be vetoed by the President of the United States. But the other side thought they saw a political advantage, and they have taken that into consideration. So they scuttled the deal in favor of a bill that would, in fact, be vetoed by the President of the United States, and that is where we are again right now. Now they have spent the last 2 weeks engaged in an effort to scare seniors and providers, and the worst thing yet is that it has been aided and abetted by the American Medical Association.

The bill is riddled with problems and missed opportunities. First and foremost, the bill we are going to be voting on would do serious harm to Medicare drug benefits on which millions of seniors have come to depend. It would tie the hands of Medicare Part D plans, resulting in higher drug prices and higher premiums for seniors.

Let me quote from a communication I received today from the Medicare Office of the Actuary. Their conclusion is that it would ''very likely result in additional Federal spending for the Part D program.'' Also, outside analysts have likewise concluded that this provision has the potential to undermine the long-term financial sustainability of the Medicare drug benefit.

This provision, which is tucked away in a seemingly harmless provision intended to clarify what classes of drugs might be protected under Part D, is a perfect example of why we work best in this body when we work together and

when we do it in a bipartisan way. When we work together, we catch these little landmines tucked away in House-passed bills that could do real harm to a program seniors rely on for their drug coverage.

Instead of writing a bipartisan bill, the majority twice walked away from the table, and now we are in a position of ''take it or leave it.'' The process here today does a disservice to the purpose of the Senate, but more than that, it does a disservice to seniors, to doctors, and everyone who depends on Medicare.

There is a deal to be reached here. We could vote on a deal today that includes many of the policies in the underlying bill but fixes glaring problems. We could vote today on a bill that would provide a 1.1-percent update for physicians. We could vote on a bill today that would not be vetoed.

To my colleagues today, I say we should vote no on this motion so we can get back to something the President will sign and get it done and get it done quickly.

I yield the floor.

The PRESIDING OFFICER. Who yields time?

Mr. MCCONNELL. Madam President, I yield back the remainder of our time.

The PRESIDING OFFICER. The majority leader is recognized.

Mr. REID. Madam President, thank you very much.

My distinguished counterpart, the Republican leader, has often said there is a right way and a wrong way to get things done here in the Senate. The right way, he says, is through bipartisanship. I agree with my colleague.

Before the Fourth of July break, we saw such a stunning moment of bipartisanship in the House of Representatives. Democrats and Republicans saw the harm our country could face if Congress did not take action to pass the doctors fix. Members of Congress knew that without bipartisan leadership, doctors would face cuts in the payments they receive, which would cause them to drop patients and even drop out of Medicare completely. Members of the Senate knew that if they sat on their hands, nothing would be done, obviously, but the House of Representatives knew that if they sat on their hands, millions of senior citizens, people with disabilities, Active Duty, retired military, and their families could all face a reduction in the quality of their care. So the Democrats and Republicans in the House of Representatives passed an identical bill that is now before us, the so-called doctors fix—listen to this—by a bipartisan majority of 355 to 59. Every single Democrat voted for the measure. Two-thirds—two-thirds—of the Republicans joined them.

This is bipartisanship at its very best. When the House, by a vote of 359 to 55, votes as they did, this is bipartisanship at its best. In fact, one of the small number of Republicans who voted no felt so badly after the vote took place that he wrote a letter to all the physicians in his district and all the senior citizens in his district and said: I am sorry. I am sorry. I made a mistake. I didn't know it was so important. He said: If I ever have a chance to vote on it again, I will vote with the vast majority of the Members of the House of Representatives.

If Senate Republicans are looking for bipartisanship, they need to look no further than the bipartisan breakthrough we saw on Medicare in the House of Representatives. Republicans in the Senate should have seen the overwhelming support for this critical legislation from both sides of the aisle in the House and joined the effort here in the Senate.

As I look across this body, I see a number of us who have served in the House of Representatives: the ranking member of the Finance Committee, the Senator from Michigan, the Senator from Illinois, the chairman of the Finance Committee, and others. The House of Representatives is known as a partisan body. We are not. They showed that, for the good of the American people, they could set their partisanship aside and vote, and they did that.

If, in fact, the Republicans here in the Senate had looked and studied what took place in the House of Representatives, this bill would have passed before the break we took before Fourth of July and it would have been sent to the President and we would be spending our time today focusing on other critical priorities for the American people such as gas prices, such as housing, and issues on which Republicans have done a lot of talking but no legislating. Instead, though, Senate Republicans have once again chosen the side of delay and obstruction.

The Republicans may talk about bipartisanship—and when they do, we agree with every word they say—but words alone won't solve the Medicare problem today. Words won't support doctors. Words won't keep senior citizens healthy or veterans or Active military and their families getting proper health care. This critical problem calls not for words but action, and the only action the Republicans have taken on this Medicare issue is delay, delay, delay.

What can the American people conclude, except that the Republicans have chosen the side of the insurance companies—the insurance companies—and the HMOs that are already making untold fortunes. Last year, the so-called Medicare Advantage, they made $15 billion. How did they make it? They made it at the expense of millions of senior citizens who rely on Medicare to stay healthy.

This morning in the Senate, the Republican leader made a very interesting point, and all should listen to the point he made. He said that with more than 300 Members of the House of Representatives having voted in favor of the legislation, the Senate should follow suit and pass it immediately.

He argued that delaying or trying to amend a bill with such strong, bipartisan support from the House would serve no purpose but to delay its implementation. Senator MCCONNELL was talking about the Foreign Intelligence Surveillance Act, FISA. But it appears that the Republican leader and his colleagues on the other side of the aisle want to have a different set of rules for each piece of legislation. On FISA, having an overwhelming 300 votes meant don't delay it and vote for it here. It means something different on Medicare, when even more voted for it.

If the 300-plus vote in the House was good enough on the FISA bill, shouldn't the 355 votes for Medicare be good enough as well? I would hope so.

In their effort to block this critical legislation, the Republicans have now concocted an argument that their opposition lies in their inability to offer amendments.

Think about that. Their opposition lies in the fact that they cannot offer amendments.

If only the majority would allow amendments, they say, this bill would sail through passage. But the facts are clear. The Senate Republican leadership was at the table when the process of the bill was discussed. The Republican leader agreed to the process about which we are now engaged. This process was agreed to unanimously by every single Senator, Democratic and Republican alike. We are here today because of that unanimous consent agreement.

The process—to which, I repeat, all Republicans agreed and all Democrats agreed—was that after a 60-vote margin on a motion to proceed, the bill would go directly to the President. There was ample opportunity to make the case for amendments prior to the unanimous consent agreement.

I have gotten to know MAX BAUCUS, of Montana, very well in my 26 years in the Congress. I don't know of a Senator who has more of a reputation for bipartisanship than the Senator from Montana. He is known as a person who works with Republicans. That is why we, on the Democratic side, so admire him and support his chairmanship of the Finance Committee. But even MAX BAUCUS has had enough. He has had enough. He knows he has tried. He knows this is stalling and that this is obstruction. Even MAX BAUCUS—I believe the most bipartisan Member of the 100 Senators here—said that is enough.

Well, I made it clear a long time ago to Senator BAUCUS and others that we would have considered any reasonable proposal. But that time has long since passed. If Republicans were serious about passing this legislation and amendments were the only thing standing in the way, that would be one thing. They would have negotiated for amendments long before the 59-vote debacle of 2 weeks ago and certainly long before now.

It could not be clearer that the amendment argument is the latest

thinly veiled excuse for opposing this legislation to provide for doctors, senior citizens, and veterans.

These excuses for voting the wrong way aren't convincing anyone. Doctors, senior citizens, military families who rely on TRICARE, and all Americans see these Republican tactics for what they are. The Republican call for a 31-day extension is another duck and dodge. Let's think a minute. Where are we going to be in 31 days? Do you think there might be conventions going on, where OBAMA is being nominated and MCCAIN is being nominated? We are out of session. That shows how fallacious and foolish a 31- or 30-day extension is. What would happen when that time runs out? We would be out of session. Well, of course, that would lead to nothing but redtape and confusion for Medicare providers during the next 30 days.

This legislation that is before this body is the very same that passed the House of Representatives, with all the Democrats and two-thirds of the Republicans voting for it, and it is supported not by a bunch of fringe groups. For example, AARP supports this. The physician community, including the American Medical Association, and all the specialist groups, such as the internists, orthopedic surgeons, and brain surgeons, all support this legislation.

The pharmaceutical industry supports it. My friends say this is very bad for seniors as it relates to pharmaceuticals. Why in the world would the pharmaceutical industry support what we are trying to do? Hospitals, the American Hospital Association, patient groups such as the American Heart Association, American Cancer Society, and hundreds and hundreds of other organizations support this.

Who opposes this bill? I will tell you who. Not hundreds of organizations, not AARP, not the American Cancer Society. Only two organizations: the insurance industry, that always has the best interests of the American people in mind. They always look out for us, as you know. Who is the other special interest group that supports doing nothing? The HMOs. How many of you remember that Jack Nicholson movie, when they brought up HMOs and whole theaters booed all over America when that provision came up?

The American people are booing the Republicans today because they have sided with the insurance industry and the HMOs. We have sided with senior citizens and with the veterans and their families. We know President Bush opposes this legislation and he threatened to veto it. Some Republicans said: Why pass a bill now when the President is going to veto it? Think about this. First of all, talk to my colleagues on the other side of the aisle. We have a government that is founded by our Constitution as three separate and equal branches. We have to do the right thing. That is how checks and balances work.

We should pass this bill because we owe it to senior citizens, veterans, the doctors who are working hard. I remind our Republican friends that the House of Representatives has more than enough votes to override the veto. There is no reason we cannot do the same in the Senate. I also remind our colleagues of what happened to the GI bill of rights, one of the landmark pieces of legislation to pass this country in the last 50 years. When Senator WEBB and others introduced that legislation to give something back to our troops in the form of educational opportunities to help them succeed when they return home, President Bush and many Republicans, including JOHN MCCAIN, declared the bill was too generous. The President vowed he was going to veto the bill.

Surely then, some Republicans said that if the President opposes the bill, the Senate has no business debating and passing it. But we did our job. We did what was right for our troops and veterans, and we passed the GI bill overwhelmingly. To his credit, President Bush acquiesced.

I believe that if the Senate Republicans follow the lead of their House counterparts by voting for cloture today and sending the Medicare doctors fix bill to the President's desk with an overwhelming bipartisan majority, President Bush will heed the calls of the House and the Senate, of doctors, of patients, of advocacy groups, and of our troops.

I, personally, support this legislation on behalf of the 320,000 Medicare patients in Nevada and Dr. Edward Kingsley, a cofounder of the Comprehensive Cancer Centers in Las Vegas, who said:

> Some physicians are not going to be able to afford [to continue taking Medicare patients]. . . . That's ultimately what we all fear—these patients are not going to have access to the care they need.

I support this legislation also on behalf of the approximately 320,000 Nevadans who are Medicare patients.

I support this on behalf of the almost 9 million service men and women and families enrolled in TRICARE.

I support this legislation on behalf of the 44 million senior citizens and the people with disabilities who rely on Medicare to stay healthy and live their golden years to the fullest. That is what Medicare is about.

Since President Lyndon Baines Johnson signed the Medicare law more than 40 years ago, the Congress and Senate has always worked to improve and maintain it. Congress has never seriously threatened Medicare or the benefits our senior citizens have earned.

Before the July 4 recess, 59 Senators voted to move toward passage of the doctors fix. All Democrats voted yes—every one of us. We were joined by a small group of exemplary Republicans who were willing to stand up to the insurance companies and HMOs and the veto threats of the President.

We needed 60 votes to pass this. We came up one short. Today, we remain one Republican vote away from passing this bill. As I look across the aisle to my Republican friends, the 60th vote is there.

I urge my colleagues to vote for cloture so we can send this legislation to the President with an overwhelming bipartisan vote to reflect overwhelming support for it among the American people.

The PRESIDING OFFICER. Under the previous order, the clerk will report the motion to invoke cloture.

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 proceed to H.R. 6331, the Medicare Improvements for Patients and Providers Act.

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

The question is, Is it the sense of the Senate that debate on the motion to proceed to H.R. 6331, the Medicare Improvements for Patients and Providers 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. 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 69, nays 30, as follows:

[Rollcall Vote No. 169 Leg.]

YEAS—69

Akaka	Durbin	Murray
Alexander	Feingold	Nelson (FL)
Baucus	Feinstein	Nelson (NE)
Bayh	Harkin	Obama
Biden	Hutchison	Pryor
Bingaman	Inouye	Reed
Boxer	Isakson	Reid
Brown	Johnson	Roberts
Byrd	Kennedy	Rockefeller
Cantwell	Kerry	Salazar
Cardin	Klobuchar	Sanders
Carper	Kohl	Schumer
Casey	Landrieu	Smith
Chambliss	Lautenberg	Snowe
Clinton	Leahy	Specter
Coleman	Levin	Stabenow
Collins	Lieberman	Stevens
Conrad	Lincoln	Tester
Corker	Martinez	Voinovich
Cornyn	McCaskill	Warner
Dodd	Menendez	Webb
Dole	Mikulski	Whitehouse
Dorgan	Murkowski	Wyden

NAYS—30

Allard	Crapo	Inhofe
Barrasso	DeMint	Kyl
Bennett	Domenici	Lugar
Bond	Ensign	McConnell
Brownback	Enzi	Sessions
Bunning	Graham	Shelby
Burr	Grassley	Sununu
Coburn	Gregg	Thune
Cochran	Hagel	Vitter
Craig	Hatch	Wicker

NOT VOTING—1

McCain

The motion was agreed to.

The PRESIDING OFFICER. Upon reconsideration, on this vote the yeas are 69, the nays are 30. Three-fifths of the

Senators duly chosen and sworn having voted in the affirmative, the motion is agreed to.

Under the previous order, all postcloture time is yielded back and the Senate will proceed to consideration of the bill.

Under the previous order, the clerk will read the bill for the third time.

The bill was ordered to a third reading and was read the third time.

The PRESIDING OFFICER. Under the previous order, the bill is passed and the motion to reconsider is considered made and laid upon the table.

The bill (H.R. 6331) was passed.

AMERICAN HOUSING RESCUE AND FORECLOSURE PREVENTION ACT OF 2008

The PRESIDING OFFICER. The clerk will report the pending business.

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.

Pending:

Reid amendment No. 5067 (to the motion to concur in the amendment of the House adding a new title to the amendment of the Senate), to change the enactment date.

Reid amendment No. 5068 (to amendment No. 5067), of a perfecting nature.

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

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

EXPLANATIONS OF VOTES

Mr. SESSIONS. Madam President, I missed the final vote on the FISA final passage that occurred earlier this afternoon. Had I been present for the vote, I would have voted in favor of the bill. This position is consistent with all my previous votes on the matter, and with my considered judgment that this legislation is critical to protecting our country from future terrorist attacks.

Madam President, I yield the floor, and I note the absence of a quorum.

The PRESIDING OFFICER. The clerk will call the roll.

The legislative clerk proceeded to call the roll.

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

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

Mrs. HUTCHISON. Madam President, I wish to say that we have had a very dramatic moment here on the floor of the Senate, and I think there wasn't a person in the room or the gallery who wasn't thrilled to see Senator KENNEDY back and looking so good, to do what he always does, and that is have the commitment and go the extra mile to keep that commitment.

I wanted to say, though, that I don't think this was the Senate's finest hour. I want us to all remember that in the Senate we have had a long tradition of bringing up legislation, having amendments, and then voting on legislation. That was not the case in the bill that was before us today. There was an attempt to pass a bill that had no ability for amendments—not one.

I voted for the bill. It is not the way I would have written it, but I thought the risk was so great that the doctor fix in Medicare might actually lapse and the upheaval for our senior citizens and voters would be a risk too great to take. But it didn't have to be that way. It did not have to be a shutout of Republicans in order to ram something through, when 100 percent of us wanted to fix the doctors; when 100 percent of us had an agreement on 90 percent of the bill that was before us. But there were legitimate differences.

Although I chose to make sure there would not be a cut in service to our seniors and our veterans, I don't think we had to do it that way. Any of my colleagues who didn't vote that way were voting conscience, and it was a tough vote for them as well. They had no input. Several of us who voted ''yes'' believed we could have changed the bill for the better, or at least if we had the opportunity for an amendment we would have known that we had our say and the majority would have ruled, and the result would have been the same.

I do not think this is the way we want to continue proceeding in the Senate, and though it was a great victory for the Democrats, and it was certainly something that is going to save a cataclysmic event, I hope that going forward we will not allow this kind of tension to be in this body because it is not necessary. This is not the House. The House does operate that way. I do not want that to happen in the Senate.

It is my plea to the majority leader that he is the leader of the Senate, not just the leader of the Democrats. I hope going forward he will give us the opportunity for bipartisan solutions. That is something I think all of us would feel better about.

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.

Mrs. DOLE. Madam President, I ask unanimous consent the order for the quorum call be rescinded.

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

Mrs. DOLE. I ask consent to speak as in morning business.

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

REMEMBERING JESSE HELMS

Mrs. DOLE. Madam President, yesterday, hundreds of people from all walks of life and across the political spectrum traveled from near and far to Hayes Barton Baptist Church in Raleigh, NC, to pay their final respects to United States Senator Jesse Helms and to express condolences to his beloved wife, Dot, and their family.

In the days since Jesse's July 4 passing, we have heard it said by many: You knew where Jesse Helms stood. As my husband, Bob Dole said, ''You didn't have to look under the table. You always knew where Jesse was.''

Even those who disagreed with Jesse on an issue could respect the fact that he always stood tall and firm—for his convictions, his faith, his family, his home State of North Carolina, and the United States of America.

When I announced that I was running to succeed Senator Helms—and I have always said ''succeed'' him because no one could replace him—I pledged to continue his commitment to constituent service that was second-to-none. He helped thousands upon thousands of North Carolinians, Democrats, Republicans, and Independents alike. No problem was too small or too great for Jesse and his staff to take on during his 30 years of service for the people of our State and the Nation.

I can still hear my father saying, ''Jesse Helms is our watchdog. He's a relentless watchdog for North Carolina and for America!'' And Jesse often recalled that my mother was on the front row at his very first rally in Rowan County. Through the years, Jesse unfailingly phoned my mother on her May 22 birthday, and she lived to be just 4 months short of 103 years old. In fact, Jesse would often stay late at his Senate office, making thoughtful phone calls and writing personal letters to constituents, colleagues, and friends.

For all his small gestures of kindness and his great acts of service, Jesse Helms was not driven by self-serving motives. He did not seek recognition for good deeds, or public acclaim for success. Jesse shunned the spotlight of the Sunday morning talk shows. The people he served from North Carolina, he said, weren't watching, they, like he and Dot, were in church.

In 1997, Fred Barnes wrote a piece in the Weekly Standard that proclaimed: ''Next to Ronald Reagan, Jesse Helms is the most important conservative of the last 25 years . . . and the most inner-directed person in Washington.'' And Fred adds, ''No conservative save Reagan comes close to matching Helms' influence on American politics and policy in the quarter century since he won a Senate seat in North Carolina.'' Of course many have said that President Reagan might never have been elected at all without the help of Jesse Helms in the 1976 North Carolina primary—a win most pundits credit with rejuvenating the Reagan campaign—and setting Ronald Reagan up to win the nomination 4 years later.

On the national political stage, Jesse Helms was known by both fans and critics as a tough-as-nails Senator who

was a relentless fighter for the causes he believed in. A master of the Senate rules, he would use them to call up votes that required his colleagues to go on the record on difficult issues. He believed the American people were entitled to know their representatives' positions. But it was Jesse's kindness to Senate employees, his pride in his staff and his love for helping youngsters that made him absolutely legendary. He would ask the Senate pages, ''Would you like to go down and have some ice cream in the Senate Dining Room?'' Imagine the thrill for these young people when the renowned chairman of the Senate Foreign Relations Committee took time out to sit down and talk with them over ice cream.

A gentleman always, Jesse was known for his civility, among his colleagues, the elevator operators, the Capitol Hill police, and all who worked throughout the Capitol.

This past Monday evening, the Senate approved a resolution—cosponsored by all 100 Senators—honoring the life, career and great achievements of Jesse Alexander Helms, Jr. His public career certainly yielded many notable accomplishments as a leader in the fight against communism, as a staunch protector of U.S. sovereignty, as a reformer of the United Nations, and as the first legislator of any nation to address the United Nations Security Council.

That said, in keeping with Jesse's character and his own commitment to himself not to become a ''big-shot senator,'' he would probably like for us to consider that his greatest accomplishments were in his roles as husband, father, grandfather, and friend.

My husband Bob and I are forever grateful that we were able to call Jesse Helms a friend and colleague for so many years, and we extend our deepest sympathies to the Helms family in this difficult time.

Mr. BURR. Madam President, I rise to honor a friend, a mentor, and a colleague I thought was a true statesman. I mourn the passing of one of North Carolina's greatest sons, Senator Jesse Helms. Senator Helms passed away last Friday, the Fourth of July, a very fitting day for Senator Helms to leave because of his deep belief in the independence of this country, in the liberties and freedoms we have.

It says a lot when you can simply mention a man's first name in his home State and everyone knows exactly who you are talking about. Jesse, as most North Carolinians referred to him, was a true gentleman. He was a good man who fought hard for what he believed in. Some core principles—free enterprise, traditional values, and a strong national defense—guided his 30 years of service in this institution, the Senate. He never relented in his pursuit to defend his beliefs or to stand up for his constituents, and he wouldn't shy away from an unpopular idea. Jesse Helms was a fearless, honest man who was considered by all who actually knew him as a true patriot. Those he served with on both sides of the aisle considered him one of the most influential Members to enter service in this body. You may not have agreed with him on every issue or any issue, and you may have been disappointed by some of the positions he took, but he was respectful, a soft-spoken man with an impeccable character and a professional and personal integrity that could never, ever be challenged.

It speaks volumes that one of his closest friends among his colleagues was the late Paul Wellstone of Minnesota. Both men were, to borrow from Senator Helms' description of Senator Wellstone, ''courageous defenders of what they believed.''

Senator Helms harbored honored qualities that today too often are taken for granted. If Jesse Helms looked you in the eye and gave you his word, you could count on him to deliver. Jesse's word was better than any written agreement or signed contract. He was a man you could trust when you shook his hand.

Certainly, a contributor to these qualities was his humble origins in the small town of Monroe, NC. I can speak for days attempting to describe the full impact that Senator Helms had on my home State of North Carolina and the impact he had on this great Nation. But Jesse Helms was more than a champion of one State or one nation. He was a global force and was always willing to stand up to oppressive governments, dictatorships, and ineffective international organizations. Some of the more controversial positions he voiced during the course of his career might have clouded the mammoth change his service to our Nation brought to the entire world.

As chairman of the Foreign Relations Committee, he wasn't afraid to boldly speak his mind in the interest of defeating international tyranny, promoting U.S. sovereignty, and solidifying our Nation's place as the leader of the free world. His global influence is still noticeable in many ways within the international arena.

Among his historic accomplishments were his tireless efforts toward the much needed reforms of the United Nations. For a legislator, Jesse wielded a unique international prominence that was proven when he was invited to be the first legislator from any nation to address the United Nations Security Council. Through his service, Jesse made our country safer. But his passion for protecting our national security, assuring our global distinction, and preserving our valuable individual democratic freedoms ran much deeper than his broad foreign policy work might suggest.

One of Jesse's most impressive qualities was that he never lost sight of his role in Washington. He knew that as Senators, we are sent here to serve the constituents of our home States, not with the power of the position. Jesse Helms focused his most unwavering efforts toward seeing every single one of the constituents who contacted his office. It is a path I have endeavored to follow, and I am grateful to him for having provided that model. If you were from North Carolina and you had a question you wanted answered by the Federal Government, Jesse would get you the answer. It didn't matter what your political affiliation happened to be or who you supported in an election. Jesse Helms mastered the art of constituent service. It wasn't unusual for him to pick up the phone himself, call a civil servant at a Federal agency working on a particular piece of case work that was lingering unresolved, and directly ask for an answer himself. That is the kind of man Senator Helms was. He wasn't interested in the rank-and-file bureaucratic hierarchy of the Federal Government. He wanted answers to questions, questions that his hard- working, Federal taxpaying constituents had. So in his gentle and respectful tone, he would simply ask for an answer.

Constituents knew they could turn to their home State Senator to solve their problems. Even if they disagreed with Jesse's politics, they knew he would help them. It will surprise no one who reads his memoirs that he dedicates an entire chapter to constituent service. I read it as a tribute to those who worked for Senator Helms on behalf of North Carolina for so many years. The stories about his focus on constituent service sound almost legendary. I am sure many of my colleagues, and no doubt a number of North Carolinians, have heard the one about two liberals chatting about the problem one of them was having in getting a Federal agency to respond to a question of one kind or another. It could have been about a problem with a Social Security check or a disability payment or any of the hundred other things that congressional offices deal with on behalf of their constituents on a daily basis.

One was complaining to the other that they were at the end of their rope. They are tired of everything, including their congressional representative. The other one listened intently, nodding in sympathy with the plight of their friend. When the friend was done talking, the other thought for a moment and finally said: I hate to say it, but it is time for you to call Jesse.

When it came to constituent service, ''Senator No,'' as he was often referred to by his critics, was more often than not actually ''Senator Yes.''

John Wooden, the great basketball coach, once said:

> You can't live a perfect day without doing something for someone who will never be able to repay you.

Jesse Helms lived his days in the Senate by that creed.

Senator Helms proved that you do not need to win by a landslide to make policy or to make a difference. As he might put it, he campaigned and legislated based upon his principles rather than his preferences. Those principles

and his constituents guided his public service. He was successful in his work, however, because of his willingness to take a stand.

Much has been made, of course, about Jesse Helms's stands against programs and spending that he felt were misguided or were not a proper responsibility of the Federal Government. Those stands had a tendency to be misunderstood. If you did not know where Senator Helms stood on an issue, it was probably because you did not ask.

Madam President, today I thank Jesse Helms. I thank Senator Helms for his service, for his leadership, for the fact that he was willing to take a stand, a stand that was not popular every time, a stand that he believed was right, not because of any political influence but because of what he understood this job to be about.

Jesse Helms today enters a house that I think he looked forward to being in. It is not the House of Congress. But truly, Jesse Helms was greeted with the sound of angels and the words ''good job.''

Today, our thoughts and prayers are with his wife Dot and their entire family. His Senate colleagues miss him. But the Senate is a much better institution today for the 30 years of service of Senator Jesse Alexander Helms, Jr.

Madam President, I yield the floor.

Mr. BYRD. Madam President, back in the 1960s, Jesse Helms was the commentator for WRAL radio in North Carolina, and on his radio program, he offered me support and comfort for some controversial views which I held at the time.

Although Helms had worked as a staffer for two different Senators, as far as I knew, Jesse Helms and I had never met. But there he was, in Raleigh, NC, in a series of radio commentaries, defending my right to take positions based on my personal convictions and values. He said I was a Senator whose ''greatest strength'' was my ''dedicated independence of thought and action.'' I was a Senator who was ''neither easily frightened nor intimidated.'' A Senator who always stood ''up for what he regards as important.''

I appreciated his support during those trying times. I never forgot it.

Therefore, when Jesse Helms was elected to the Senate in 1972, it seemed that we were already well acquainted. We became friends as we came to know each other, and to respect each other.

Jesse Helms was a courtly Southern gentleman of the first order, a product of the South and his beloved North Carolina, which happens to be my native State. Jesse Helms was also a deeply religious man of integrity, honesty, and patriotism.

He believed in the Constitution. He believed in the Senate as an institution and in its premier place in our government. Senator Helms was one of those rare Senators who was never looking for another office. He wanted to be a Senator. He was grateful to be able to serve the people of North Carolina and the United States in this Chamber.

And he certainly made his presence felt here in the U.S. Senate. During his years in the Senate, he served as chairman of the Senate Agricultural Committee and the Senate Foreign Relations Committee.

More than once, Senator Helms was the singular ''no'' vote on a particular matter, i.e, the Frank Carlucci nomination as Secretary of Defense, November 20, 1987, 91–1: Elementary and Secondary Education Improvement Act of 1987, December 1, 1987, 97–1, S. 373. He proudly wore his well earned title of ''Senator No.''

No matter what the press said, no matter what the pundits were saying, no matter what even his colleagues were saying, he never wavered in his convictions. The ''paramount thing'' for political leaders, Senator Helms once explained, ''is whether a man believes in [his] principles . . . and whether he is willing to stand up for them, win or lose.''

Consequently, we always knew where Senator Helms stood. Take an issue—abortion, prayer in school, presidential nominations, reducing the deficit, taxes, government waste, the future of this country—if you did not already know where he stood, he was always ready to tell you.

Some of his positions were unpopular. Some of them seemed extreme and doomed from the start.

But, his differences with his Senate colleagues were always political, not personal. They were differences of opinions, not of heart.

Madam President, I express my most heartfelt condolences to the family and friends of this extraordinary Senator.

Mrs. HUTCHISON. Madam President, I wish to pay tribute to the memory of our former colleague, Senator Jesse Helms, who passed away, fittingly on Independence Day, a day which meant so much to him.

A great deal has been written and said about Senator Helms. He was a man who provoked strong feelings—both pro and con—and he enjoyed being the subject of spirited discussions.

It is well known and well told that Senator Helms could be, and often was, a tough opponent but also could be and often was an invaluable ally.

He was a man of strongly held, deeply held views and was never hesitant to share those views with the rest of the Senate.

But it is less well known that Jesse Helms was a kind and considerate colleague. Fifteen years ago, he welcomed a new Member from Texas into the Senate. I always appreciated his advice and his love of the Senate as an institution.

Jesse Helms began as an editor at a newspaper in North Carolina and then went to a television station in Raleigh. It was the notoriety which he gained from being a TV commentator which led him to the U.S. Senate.

Today we have many former colleagues who started in the U.S. Senate and are now TV commentators. It was typical of Jesse to do it the opposite way.

He once said of his career in the Senate, ''I would like to be remembered as a fella who did the best he could and didn't back down when he thought he was right.''

Jesse Helms was a man who had the courage to stand against the often transient winds of political convenience. He wasn't always right. He was right a good part of the time, but he was always Jesse.

Mr. FEINGOLD. Mr. President, everyone in this Chamber is saddened by the loss of our former colleague from North Carolina, Jesse Helms. Many of us served with him, and know how dedicated a public servant he was. I didn't always agree with him; in fact, we disagreed much of the time. But one of the many wonderful things about working in the Senate is finding ways to work together with colleagues who have very different beliefs and goals for the good of the country.

Senator Helms and I shared a commitment to ensuring that the U.S. only entered into trade agreements that are fair to the hard-working men and women of this country. I appreciated his commitment to that issue, and I was pleased to work with him to support fair trade.

I also served with Senator Helms as a member of the Senate's Foreign Relations Committee. He served as chairman for many years, and during that time we also found common ground on the issue of most favored nation, MFN, status for China. Senator Helms and I worked together in opposition to granting MFN status to a country with such gross human rights violations. Together, we led the fight against MFN because it ignored the appalling human rights abuses in China, and abdicated the Senate's responsibility to exert pressure on the Chinese government to improve its record on human rights.

In the wake of Senator Helms' passing, people will remember him for the many different things he accomplished in his lifetime. I add these memories to those remembrances of Senator Helms, who led such a full life inside and outside of public service. My thoughts are with his family, and the people of North Carolina he served with such dedication for 30 years.

Mr. BUNNING. Madam President, I would like to pay tribute to a friend and great American Senator who, fittingly, left us on the Fourth of July—the same day as two of our Nation's Founders: Thomas Jefferson and John Adams—at the age of 86.

In terms of a U.S. Senator, Jesse Helms was a heavyweight. Jesse Helms was relentless in his fight to defend the ideals that embody America. And no matter what policy Jesse Helms was defending during a debate, everyone could agree on one thing: you always knew where he stood and that he was a man of his word. A devoted and outspoken conservative, his principles of

small government and individual freedom served as an international microphone for American creed during the Cold War and beyond.

While Jesse's political life was open to everyone, I had the distinct honor of knowing him on a personal level. In 1998, after serving in the U.S. House of Representatives for over a decade, I came to the Senate and was quickly greeted by Senator Helms—apparently Senator Helms knew a conservative when he saw one. As someone who shared many of the same philosophical views as Jesse Helms, we would often discuss contentious issues that arose before the Senate. During these moments I realized that, behind his hard public image, Jesse Helms was one of the most compassionate and sincere men I had ever met. This affectionate and friendly attitude brought out the southern gentleman whom we all loved.

I will miss Senator Helms's political leadership, but I am happy his impact on our country lives on. Mary and I send our thoughts and prayers to his wife Dot and their family as they mourn for their loss and remember an extraordinary life.

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

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

UNANIMOUS-CONSENT REQUEST—S. 2731

Mr. REID. Mr. President, I ask unanimous consent that the Senate proceed to the consideration of Calendar No. 698, S. 2731, at a time to be determined by the majority leader, following consultation with the Republican leader; and that the only amendments in order, other than the committee-reported substitute, be the Biden-Lugar managers' package substitute amendment; two amendments from each side that are germane to the Senate bill, the committee-reported substitute and the Biden-Lugar substitute; with second-degree amendments in order to the four amendments listed above, two per side, that are germane to the amendment to which they are offered; that general debate time on the bill be limited to 2 hours, equally divided and controlled between the leaders or their designees; that the debate time on any first-degree amendment be limited to 60 minutes, equally divided and controlled in the usual form; that any second-degree amendments be limited to 30 minutes equally divided and controlled in the usual form; that upon the disposition of all amendments, and the use or yielding back of time, the substitute, as amended, be agreed to, the bill, as amended, be read a third time, and the Foreign Relations Committee then be discharged of H.R. 5501, the House companion, and that all after the enacting clause be stricken and the text of S. 2731, as amended, be inserted in lieu thereof, the bill be read a third time, and the Senate proceed to vote on passage of H.R. 5501, as amended; that the provisions of this agreement become effective only after each of the amendments covered in this agreement have been available for 24 hours for review and printed in the RECORD; and each leader notifies the legislative clerk that they have no objections, and places a statement in the RECORD; further that S. 2731 then be returned to the calendar.

The PRESIDING OFFICER. Is there objection?

Mr. KYL. Mr. President, there is, and I would like to make a brief statement. The majority leader's long unanimous consent agreement pertains to an important bill that the President would like to get passed through this body.

I think there is strong support for a bill along these lines. The consent itself, if one listened carefully, contains quite a few restrictions on the number of amendments, the time for debate, and so forth.

Since there are ongoing negotiations—I am personally involved in some of them—with regard to provisions of the legislation, the unanimous consent agreement is too restrictive at this time. I would hope that we could work out an agreeable substance of the provisions as well as an agreeable procedure at a subsequent time.

In fact, I think if we can reach an agreement on the substance, the procedure will be very easy to work out.

The PRESIDING OFFICER. Objection is heard.

Mr. REID. Mr. President, I have spoken today to my staff, and they have been in touch with Senator BIDEN's staff. Senator BIDEN also thinks that something can be worked out.

We have been hearing for a long time that is the problem. In conversations in the past with the President's people, this is important to him. It is an important piece of legislation. I would hope that Senator KYL and others, working with Senators LUGAR and BIDEN, can get an agreement worked out.

This is a bill that should have wide-ranging support. I am going to file cloture, I say to my friend, so that we can have a cloture vote on this on Friday. You might want to check with your people and see if we could perhaps have it tomorrow. But that is a decision that people can reach. If cloture is invoked, we will see if we can work out a procedure for working with the amendments. Hopefully, we can do that.

In fact, to be candid, my staff said Senator BIDEN wants to hold this off for a couple more days. I think we are going to have to go ahead and try to move with this. So maybe with what Senator BIDEN and you have said, maybe if we take a look at this either tomorrow or Friday—that is, the motion to proceed—perhaps we can work something out to have some way of moving forward.

I hope so, otherwise I would hope this will not go in the barrel of things that we cannot do this year. That would be a shame. This is a cloture petition. I could have gotten signatures on both sides of the aisle. So I appreciate the manner in which my friend has spoken. I hope this is something we can work out.

TOM LANTOS AND HENRY J. HYDE UNITED STATES GLOBAL LEADERSHIP AGAINST HIV/AIDS, TUBERCULOSIS, AND MALARIA REAUTHORIZATION ACT of 2008—MOTION TO PROCEED

Mr. REID. Mr. President, in view of the objection lodged against the request I made, I now move to proceed to Calendar No. 698, the Tom Lantos and Henry J. Hyde U.S. Global Leadership Against HIV/AIDS, Tuberculosis, and Malaria Act, and I send a cloture motion to the desk.

CLOTURE MOTION

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

The assistant legislative clerk read as follows:

CLOTURE MOTION

We, the undersigned Senators, in accordance with the provisions of rule XXII of the Standing Rules of the Senate, hereby move to bring to a close debate on the motion to proceed to Calendar No. 698, S. 2731, the Lantos-Hyde U.S. Global Leadership Against HIV/AIDS, Tuberculosis and Malaria Act.

Harry Reid, Joseph R. Biden, Jr., Barbara A. Mikulski, Charles E. Schumer, Christopher J. Dodd, Debbie Stabenow, Maria Cantwell, Byron L. Dorgan, Richard Durbin, Patrick J. Leahy, Bernard Sanders, Benjamin L. Cardin, Jack Reed, John F. Kerry, Patty Murray, Jon Tester, Thomas R. Carper.

Mr. REID. I would say, before I ask that the mandatory quorum be waived, that I had the good fortune, as did my colleague, to serve with both Tom Lantos and Henry Hyde. Both of these gentlemen, while serving in the House of Representatives, came to Nevada and did campaign events for me; one was a Democrat, one was a Republican.

I have great respect for both of these tremendous House Members, both chairmen—Congressman Hyde was chairman more than once. So it will be good if we can pass this legislation.

I ask unanimous consent that the mandatory quorum be waived.

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

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

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

AMERICAN HOUSING RESCUE AND FORECLOSURE PREVENTION ACT OF 2008

Mr. ISAKSON. Mr. President, I rise for a moment to talk about the pending housing stimulus bill which we will vote on tomorrow and then, hopefully, it will quickly be delivered to the House where any differences we have can be worked out and agreed to. I come to talk about this issue because America faces a pending financial crisis that is founded in the housing market, with the troubled mortgages in the financial services sector, so much trouble that the current economic decline we have experienced and the current difficulties the stock market is experiencing are, in large measure, tied to the state of housing.

I commend Senators SHELBY and DODD. I actually thank the distinguished Senator from New York for the help he gave me on the tax credit on this bill.

This bill is not perfect, but it certainly improves tremendously the climate in the United States for housing. For a second I want to try and impress upon my colleagues how important this issue is and dispel some of the myths that have been put out there about this issue. First, unless we pass GSE reform, which means Fannie Mae and Freddie Mac, there is going to be little, if any, liquidity in the conventional mortgage market. This legislation is a good reform piece for Fannie and Freddie. It also provides provisions that will allow for forward commitments so that mortgage companies can make mortgages and fund them through Fannie and Freddie and get housing moving in the marketplace.

Second, it changes the loan limits on conventional and conventional jumbo loans to levels that are reflective of the values of housing.

Third, it provides for a housing tax credit, something I was proud to be a part of. I proved in 1974, the last time we had a crisis like this, that it is the one single thing we can do as a catalytic agent to drive buyers back to the housing market. So the solution is not a bailout but a stimulus to get buyers in there buying the inventory that was built over the last 12 months.

Fourth, there is a significant reform of FHA. Within that provision there is the creation of moneys for the refinance of troubled subprime loans. There has been a lot of misinformation in the news media and misinformation in speeches on this floor, frankly, on whether this is a bailout or whether it is a good thing to do.

For a second I want to explain why it is absolutely not a bailout and why it is absolutely the right thing to do. Any loan that is refinanced, any subprime loan in trouble that is refinanced has to meet the following qualification: Its equity has to be negative, meaning the house is worth less than what is owed against it; No. 2, the lender who holds the loan against that house has to agree to take the discount or take the hit on whatever the differential is in that negative value; No. 3, FHA will underwrite the new loan to refinance out the discounted balance of the loan to the lender, provided the individual is somebody who can qualify to amortize the loan. It forces the lender to take the hit which they are going to take eventually in a foreclosure, and it prevents the foreclosure. For the person in trouble, it gives them a chance to pay back over time and get their credit established and improve themselves and build equity in the house.

Most importantly, it benefits the next-door neighbor. I have heard so many people say we should not be helping somebody in trouble on a subprime loan. What do we say to the people who are making their payments and are not in trouble? The answer is, in most neighborhoods today where there is a foreclosure, values are going down, not up. You have John Q. Public who has made the monthly payments, has good credit. The house next door to him is foreclosed on. The grass grows. The lender sells at a deep discount. What happens, his equity is gone or is greatly reduced.

The combination of the housing stimulus in terms of the tax credit, combined with the ability to refinance out of the difficult subprime loan and the requirement that the lender take the deep discount they are going to ultimately have to recognize anyway, is a formula for rebuilding the housing market.

I know everybody here has a difficulty. There was one amendment—we will not be allowed any amendments—that I was very interested in offering in terms of the tax package. But I know the tree is filled up. There will be a managers' amendment. We will not be able to get to it. But you don't get everything you want in the Senate.

One thing we have to do is to improve the plight of the American people economically. There are two things overriding the average American and two things only: One is what they are paying at the pump for gasoline and, secondly, is the declining value of equity in their house. With passage of this bill, we can show hope for the housing market. We may stimulate the buying public to come back and solve it with good marketplace-based solutions rather than subsidies or a bailout and, most importantly, return to a more healthy mortgage market and a more disciplined mortgage market and a better underwritten mortgage market. Then secondly and most importantly, we can change attitudes. The attitudes of the buying public are pretty negative right now because the lenders can't make a loan. House values are going down. They want to buy, but they want to buy at the bottom. We have to send a signal that the lenders are back in business making loans. Freddie Mac and Fannie Mae are back in business in terms of securitizing mortgage money and putting liquidity into the market, and values are stabilizing. So for whatever differences some Members have over the bill they would like to have versus the bill we do have, we should be reminded that every day we wait is a protraction of the current economic difficulty in the housing market. We cannot afford to leave this week without agreeing to the motion tomorrow and sending it to the House so the House, when they come back next week, can pass the legislation and the President can sign it and, by the middle to the end of July, the mortgage market, the housing market, and the buying public's attitude will be turned around. By doing that, we can hopefully have a light at the end of the tunnel that is not a locomotive but, rather, is a prosperous, healthy housing market and a disciplined, well capitalized, and liquid mortgage market.

It is critical that we pass this legislation. I urge my fellow Senators to come to the floor, vote for the motion, and then let us get it to the House and encourage House Members to do precisely the same thing. It is getting too late. If we wait too long, it won't matter what we do.

I yield the floor.

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

The PRESIDING OFFICER (Ms. CANTWELL). Without objection, it is so ordered.

MORNING BUSINESS

Mr. REID. Madam 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.

CHANGES TO S. CON. RES. 70

Mr. CONRAD. Madam President, section 221(f) of S. Con. Res. 70, the 2009 budget resolution, permits the chairman of the Senate Budget Committee to revise the allocations, aggregates, and other appropriate levels in the resolution for legislation providing economic relief for American families, including reauthorizing the Temporary Assistance for Needy Families program. In addition, section 227 authorizes the chairman of the Senate Budget Committee to revise the allocations, aggregates, and other appropriate levels in the resolution for legislation making improvements in health care, including within Medicare (subsection

(b)), Medicaid (subsection (e)), and other health areas (subsection (f)). The revisions are contingent on certain conditions being met, including that such legislation not worsen the deficit over the period of the total of fiscal years 2008 through 2013 or the period of the total of fiscal years 2008 through 2018.

I find that H.R. 6331, the Medicare Improvements for Patients and Providers Act of 2008, satisfies the conditions of the reserve funds to provide economic relief for American families and improve America's health. Therefore, pursuant to sections 221(f) and 227, I am adjusting the aggregates in the 2009 budget resolution, as well as the allocation provided to the Senate Finance Committee.

I ask unanimous consent that the following revisions to S. Con. Res. 70 be printed in the RECORD.

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

CONCURRENT RESOLUTION ON THE BUDGET FOR FISCAL YEAR 2009–S. CON. RES. 70; REVISIONS TO THE CONFERENCE AGREEMENT PURSUANT TO SECTION 221 (f) DEFICIT-NEUTRAL RESERVE FUND TO PROVIDE ECONOMIC RELIEF FOR AMERICAN FAMILIES AND SECTION 227 DEFICIT-NEUTRAL RESERVE FUND TO IMPROVE AMERICAS HEALTH

[In billions of dollars]

Section 101	
(1)(A) Federal Revenues:	
FY 2008	1,875,401
FY 2009	2,029.653
FY 2010	2,204.695
FY 2011	2,413.285
FY 2012	2,506.063
FY 2013	2,626.571
(1)(B) Change in Federal Revenues:	
FY 2008	−3.999
FY 2009	−67.746
FY 2010	21.297
FY 2011	−14.785
FY 2012	−151.532
FY 2013	−123.648
(2) New Budget Authority	
FY 2008	2,564.247
FY 2009	2,538.301
FY 2010	2,566.665
FY 2011	2,692.500
FY 2012	2,734.141
FY 2013	2,858.583
(3) Budget Outlays	
FY 2008	2,466.678
FY 2009	2,573.384
FY 2010	2,625.623
FY 2011	2,711.441
FY 2012	2,719.543
FY 2013	2,851.826

CONCURRENT RESOLUTION ON THE BUDGET FOR FISCAL YEAR 2009–S. CON. RES. 70; REVISIONS TO THE CONFERENCE AGREEMENT PURSUANT TO SECTION 221 (f) DEFICIT-NEUTRAL RESERVE FUND TO PROVIDE ECONOMIC RELIEF FOR AMERICAN FAMILIES AND SECTION 227 DEFICIT-NEUTRAL RESERVE FUND TO IMPROVE AMERICAS HEALTH

[In millions of dollars]

Current Allocation to Senate Finance Committee	
FY 2008 Budget Authority	1,100,859
FY 2008 Outlays	1,102,857
FY 2009 Budget Authority	1,085,721
FY 2009 Outlays	1,087,208
FY 2009–2013 Budget Authority	6,165,556
FY 2009–2013 Outlays	6,172,365
Adjustments	
FY 2008 Budget Authority	1,942
FY 2008 Outlays	1,924
FY 2009 Budget Authority	6,633
FY 2009 Outlays	6,516

CONCURRENT RESOLUTION ON THE BUDGET FOR FISCAL YEAR 2009–S. CON. RES. 70; REVISIONS TO THE CONFERENCE AGREEMENT PURSUANT TO SECTION 221 (f) DEFICIT-NEUTRAL RESERVE FUND TO PROVIDE ECONOMIC RELIEF FOR AMERICAN FAMILIES AND SECTION 227 DEFICIT-NEUTRAL RESERVE FUND TO IMPROVE AMERICAS HEALTH—Continued

[In millions of dollars]

FY 2009–2013 Budget Authority	−3,859
FY 2009–2013 Outlays	−2,070
Revised Allocation to Senate Finance Committee	
FY 2008 Budget Authority	1,102,801
FY 2008 Outlays	1,104,781
FY 2009 Budget Authority	1,092,354
FY 2009 Outlays	1,093,724
FY 2009–2013 Budget Authority	6,161,697
FY 2009–2013 Outlays	6,170,295

IDAHOANS SPEAK OUT ON HIGH ENERGY PRICES

Mr. CRAPO. Madam 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 energy_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 Crapo, Thank you so much for all you are doing for the citizens in Idaho. Most of all, thank you for your assistance with my disability issues. I would like to share my story. I have been a Registered Nurse for 28 years working fulltime and overtime. In 2005, I developed some heart issues, but, at that time, was able to return to work. In August 2007, the heart condition deteriorated to the point I can now no longer work. I have been denied disability twice thus far. My physician has wanted me to attend cardiac rehabilitation, which we do not have available in Lewiston or Clarkston. The nearest is Moscow, Idaho, 30 miles away. Due to being turned down on disability and the rising cost of gasoline, I can no longer afford to drive to Moscow for the cardiac rehabilitation I need.

Thank you again. You truly seem to care more about your constituents than any other legislator I have ever encountered. I will be campaigning very strongly for you when the time comes.

JOY, *Lewiston*.

Senator, fuel is a big issue here in Idaho. As a lifelong Republican, I am wondering why, after six years with a Republican President, Senate and House, nothing was done then. What we are seeing now is a result from a lack of activity back then. I watched Bill Gates and the oil company execs totally dominate our Congressional folks. You have authorized spending billions for Iraq, but did nothing to promote hydrogen fuel cell development here. I think you are pandering to the oil companies. It is said that fuel for the hydrogen vehicles would be too hard to dispense. Why not use it for schools where the vehicles could be fueled at the home base? We burn literally hundreds of thousands of gallons of fuel a year just in our local school districts. When you decide to act for the ''real'' future, then we will support you. At this house, Obama is looking better and better every day. Obama has earned his way this far. McCain has no answers other than a few pennies off the gas tax. Get real, Senator.

CHARLIE, *Caldwell*.

You asked what these fuel prices are doing to us. I live on a fixed income of $650.00 a month, pay $450 a month just for rent. So guess what? By the time you buy food, it is gone and I cannot afford to drive 80 miles a day and make $7.00 an hour. I would spend it all just for gas, but I'm sure everybody else is in the same boat. But thanks for listening to an old man moan. I used to like to go fishing sometimes, but not this year, I guess. Thanks again.

MARCELLUS, *Rupert*.

Senator Crapo, I would love to share my story with you. I have a small business that takes me out of state a lot. I work on X-ray machines in hospitals around the country. It has gotten to where most hospitals cannot afford to replace their equipment, and my prices are going up due to travel. The higher my prices go, the less work I get due to short budgets, and so on. It has gotten to the point that I only have one job scheduled so far this year. I do not know how I am going to stay in business much longer.

I cannot understand how Congress can sit on their butts and say we cannot pump our own oil due to environmental concerns while China pumps 50 miles off of our cost. It is time we put the few liberals in their place and start taking care of our own before we have our own revolution, and the people take back our country from the do nothing government. I hope you act fast.

TODD.

Mike, Thank you for the opportunity to share my views on the energy crises.

First of all, I think the ethanol program is the biggest boondoggle the United States has ever supported. It takes almost as much energy to produce a gallon of ethanol as the gallon gives back. It cost more per gallon than gasoline, and gives far fewer miles per gallon than gasoline. It takes the food away from the livestock and poultry that we need to eat, or at least makes the feed for them more expensive. Are we not going backwards here?

I fully support nuclear energy. It is the only way to go for dependable electrical power generation. Unlike coal and natural gas, there is no fuel to mine or drill for, no transportation cost for that fuel and no air pollution resulting from burning that fuel.

Wind power electrical generation is a fine resource to pursue. It is very valuable in reducing the electrical load on the base loaded electrical generators. The more we can reduce the load on the base generators, the more energy we save.

We also need to expand our domestic oil production. We need to drill and get into production, ANWR in northeast Alaska. We need to get this done before Prudoe Bay is depleted so we can utilize the existing Trans-Alaska pipeline. If I recall correctly, that pipeline and all related equipment has to be removed once it becomes inactive.

While on the subject of Alaska, I understand that some of the contention of the Iraqi people is how to divide up their oil wealth. How about looking at the system the

state of Alaska uses to divide up their oil wealth? Every man, women and child receives a check for the same amount as everyone else. The oil fund is inflation-proofed before the amount of the checks is determined. Why do people think they always need to reinvent the wheel? Alaska's system is fair, simple and it works.

With the profits the oil companies are reporting, I see no need for tax credits for any oil company. If they cannot get done what they need to do with those kinds of profits, the tax credits are not going to make the difference. I really think it is time for the oil companies to be subject to a pricing commission, like the electrical utilities are, only on the federal level. Other commodity producers that produce things that the people of the United States have to have are subject to pricing commissions i.e. Public Utilities Commissions, why not the oil companies? The whole United States would grind to halt and a lot of our population would freeze to death in the winter without oil. I would say that constitutes a need for a product that should be subject to a pricing commission.

RUSS, *Payette.*

On a fixed income and maybe only a few years to live due to chronic asthma and advancing COPD, it is already making it hard—doctor appointments, and to go see and help my 93-year-old mother. I am 65 and have maybe 2 more years to live. What kind of quality of life can I expect with the price of gas going up so fast that before you can finish filling your car the station attendants are out changing the price of gas? This has happened twice in the last month. I have a 10-gallon tank and get 35 miles to the gallon on a 1988 Toyota Corolla. It takes about three tanks a month for all the running I have to do. It used to cost me $55.00 a month to fill car; now it cost $123.00 a month. If gas goes up to $7.00 a gallon, it will cost $210.00 a month just for gas. What do I do? Do I not eat so I can go to doctor's appointments or do I eat and die sooner because I cannot afford to put gas in my car? Thousands of people are in the same boat as I am—we either forget about health concerns or eating. I knew one lady a few miles from where I live that was shop lifting dog food and eating it just to survive. She has died now, but there is going to be a lot more of this going on. It is a shame that the Congress has not got off their butts and allowed more domestic drilling for oil in our country. We know where the oil is; let us get to drilling and tell the oil cartels to stuff it where the sun does not shine. Something else I do not understand is, the other day we drove to Salt Lake City and the refineries were not even working, there was no steam or smoke coming from the cracking towers. Come on—get this mess worked out. We are going to start dropping like sprayed flies out here if Congress does not do something.

RUSSELL, *Heyburn.*

Senator Crapo, A year ago I was spending around $85 a month for fuel; now my monthly costs are twice that! Thirty percent of the current cost for oil is due to speculation in the unregulated Wall Street venue; the Enron Loophole from 2001 allows this!! First, fix this problem! Next, higher fuel mileage per gallon in a shorter period of time needs to be mandated!! Third, a major emphasis on alternative renewable fuels; not more drilling in our country or off shore for oil and gas; including blowing the tops off of mountains for coal!! In addition, no more nuclear reactors as they use too much water and generate radioactive waste that lasts for hundreds of years!! We can do this and most Idahoans and Americans are demanding such a plan from our government leadership! Brazil did it in five years and are we any less capable than they are? I think not! You Republicans, especially, are under too much influence by the oil, gas and coal companies to continue doing business as usual!! We need truly green changes in our country, not more of the same.

JOY, *Hayden.*

I, like most Americans, have been affected by the rising fuel prices. My budget cannot sustain the $60 per tank cost to fill my car with gas. Instead of sitting back and complaining about high gas prices, I have chosen to find alternate forms of transportation whenever possible. I ride my bicycle to work every day, and use the public transportation and carpooling whenever possible for longer trips. When I am conscious of my transportation choices, I can make a tank of gas last a month.

Our country needs to step up and take responsibility for our energy choices. We need to become less dependent on foreign oil, yes; but we need to do so by changing the root of the problem instead of implementing a temporary band-aid on our problems by drilling for oil in our country's pristine and sensitive environmental areas. We need to concentrate our resources on developing cleaner energy rather than looking for ways to sustain our irresponsible use of energy. Better public transportation options, fuel conservation incentives, and increased research and investment in cleaner energy are the sustainable answers. Drilling in ANWR is not. The change will be a bit painful in the short term, but we need to have the foresight as a country to understand that long term solutions are the right ones.

Sincerely,

ROSS.

My son-in-law works for a large gas station corporation, routing trucks to different stations and flies almost weekly to Houston and Atlanta and says THERE IS NO GAS SHORTAGE, just manipulation. Please tell people the truth about the oil and gas reserves we could have available (example: South Dakota, etc.). Our story personally: We live in a rural area, 13 miles from the nearest town and 2 hours from a city big enough to purchase from larger retailers. Our fuel cost is $35.00 to go to WalMart, round trip! We recently purchased an economy car (that we couldn't really afford), and now the trip will cost around $20. This is if fuel stays at $4. Our daughter has Prader-Willi Syndrome, and we travel 2–4–8 hours one way for medical appointments about eight times a year. We do not feel the ten cents a mile from Medicaid is worth the hassle for reimbursement. We are drowning in fuel extortion costs. Must we be forced to move from a rural setting to the city? Please help.

MARGARET.

Senator Crapo, I want to thank you for taking the initiative on helping Idahoans with the increasing energy costs. I am fortunate enough to only have a two-mile commute to and from work, but I have still noticed a considerable change in the fuel cost's impact on my finances.

I was recently in Salt Lake City where I stopped at a gas station to fill up. I noticed a different-looking pump there which said ''natural gas'' on it. I had never seen such an option at a fueling station before. Just as I was in awe at the different option, a gentleman drove up in a vehicle and began filling up with this natural gas pump. I struck up a conversation with this man and discovered that natural gas is a growing phenomenon in vehicles there in the Salt Lake City area. The car prices are very similar to those of petroleum fueled vehicles, but the cost of natural gas was about 63 cents per gallon versus the $4 I was paying. This experience, of course, made me consider other fueling options.

I know that there are many alternatives to using gasoline to power vehicles such as natural gas, electric, water, and others. Granted, some of these options are not feasible to implement in Idaho. Is it possible to make natural gas an option in this area? I do not know if it is legislation that drives such changes, but I, for one, am ready for some feasible alternatives. I am considering getting a Segue or a GEM (global electric motorcar) as an alternative to relying upon gas powered vehicles. I would appreciate any help in this area, or other incentives to alternative power options for the home. Thank you again for your help on our behalf. Let me know if I can help in any other way.

SETH.

Dear Senator Crapo: Regarding energy prices. We drive less, plan our trips to town with lists, etc. so we know exactly where we are going and in what order to make our trips more efficient. We will not be taking a vacation this year. We will be forced to sell (or give away) our livestock because we cannot afford to pay the price of hay to sustain them over the winter. We will have to buy a different furnace as our current one is oil, or turn down the heat to 55 degrees most of the winter and bundle up (which is what we did last winter).

I do not like government intervention, but some tax credits for alternative energy sources would be nice—credits for wind power, solar power; both of which are in plentiful supply in Idaho. The state government could do a lot to encourage alternative energy sources as well. We all agree that we need to use alternatives, but no one wants a wind generator in their neighborhood. What is wrong with us? Can we not see the future benefits versus our temporary eye appeal?

Also, the government could give some large tax incentives to encourage recycling of plastics, which to my understanding, use over twice the percentage of our oil imports than the manufacture of gasoline. In Texas, the Texas Disposal Company has a recycling center set up in a lot next to the local post office in Alpine (population 6,500) every Saturday. They take all kinds of newspaper, magazines, junk mail, plastics, metal cans, etc. There was even a man who brought his pickup truck down every week to collect glass for recycling. The cost of transporting all of this recycling in Texas would be greater than in Idaho, so why cannot we do that here? Or nationwide?

I noticed in Costco the last few weeks that each swimsuit is set up on these clear plastic molded sheets, which are then stacked one on top of the other. We are overusing plastic! All of this ends up as waste in our landfills. Encouraging a national recycling program would do many positive things, less oil imports would be the biggest and then less waste in our landfills, a huge concern as well.

Seems to me that recycling and a greater usage of alternative energy sources is something that Republicans and Democrats, conservatives and liberals could and should agree upon.

Sincerely,

LISA.

I have four children, and my husband and I have good-paying jobs, probably better than most. We have a low debt load, have stayed away from credit cards and buy things when we have the money. We have never had a vacation in the 24 years that we've been married because we had other places that money needed to go.

Now, even though we have stayed out of debt and only have $3,000.00 left to pay on our car, we are afraid. Food prices have risen so that last year, my family of six was eating and maintaining a household on $300.00 per week, and that included gas for the drive my husband has to work. That budget has now increased to $500.00 per week.

My son, a second-year electrical engineering student at ISU, may not be able to go back to college this year because the gas to get there is just too much on top of the increased cost of tuition. My daughter, a senior this year, cannot get a job because the cost of driving to work would eat up her minimum wage paycheck.

Those of us who work hard, stay out of debt and invest our money in the American way of life are now told to move our money away from U.S. investments and go elsewhere where the economy is more stable, but what does that say about the country that we live in? We do not feel secure, we do not feel safe and we do not feel any comfort in the Senate, Congress or the Presidency. This is summer; when the demand for fuel goes up in the winter and we do not have enough money to pay for gas to go to work, let alone food for our children to eat, how are we going to keep warm or live? This winter, I think this country is going to see many people pushed to the brink of chaos because there is no other choice. Oil needs to be taken off the speculation market. This doesn't just affect our way of life here in the U.S.; it is also affecting world markets and food prices around the globe.

D.S., *Rigby*.

JOINT ISRAELI-PALESTINIAN VENTURE

Mr. LEVIN. Madam President, the New York Times recently published an article entitled ''Web Start-up a Joint Israeli-Palestinian Venture'' and, as the title suggests, it is a story about a group of Israeli and Palestinian entrepreneurs that have joined forces to start an internet business venture. Mr. President, I will ask to have the New York Times article printed in the RECORD. What is impressive about this story is that technology, in the form of Internet-based video teleconferencing, has been able to jump boundaries to allow people to work together while apart by enabling this business, G.ho.st, to use the Internet to complete many of the day-to-day tasks that ordinarily require actual face-to-face contact. More importantly, this business venture is yet another example of the good will that exists on both sides of the Israeli-Palestinian divide.

In March 2005, I had the opportunity to travel with six Michiganders, three Palestinian-Americans and three Jewish-Americans, to Israel and the Palestinian territories to study the possibility of joint Israeli-Palestinian business ventures. During this visit, we met with entrepreneurs active in a full range of industries, from agriculture to textiles to software development to manufacturing. While these joint business ventures cannot make peace, they do help foster good will, and they demonstrate the potential for effective, economic coexistence if a final peace agreement can be reached.

More recently, during a trip to Israel to present the Senate resolution commemorating the 60th anniversary of the State of Israel, I learned of what I hope will be a major joint economic venture. During my meeting with President Shimon Peres, I learned about the Valley of Peace Initiative, a large-scale undertaking to construct a tourism corridor. The Valley of Peace is envisioned to stretch over the 500 kilometers along the Israeli-Jordanian border, from the Red Sea to the Yarmuk River. Under the current plan, the Valley of Peace initiative includes several projects, ranging from a water conduit connecting the Red Sea and the Dead Sea in an attempt to prevent the latter from drying up, to an Israeli-Jordanian airport near Eilat and Aqaba, to a connection of the Jordanian and Israeli railway systems and a mutual Israeli-Palestinian Authority industrial zone. While the initiative is still in the idea stage, it could offer a major opportunity for joint economic cooperation between Israelis, Palestinians, and, in this case, Jordanians.

Employment and economic growth are critical to fostering stability for Israelis and Palestinians alike. G.ho.st is another example of a promising partnership that can benefit the region in ways that surpass the positive economic impact. Should their business model prove to be a success, it would bode well for building additional partnerships and fostering further much-needed goodwill in the region.

Madam President, I ask unanimous consent to have The New York Times article to which I referred printed in the RECORD.

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

[From the New York Times, May 29, 2008]

ISRAELIS AND PALESTINIANS LAUNCH WEB START-UP

(By Dina Kraft)

RAMALLAH, WEST BANK.—Nibbling doughnuts and wrestling with computer code, the workers at G.ho.st, an Internet start-up here, are holding their weekly staff meeting—with colleagues on the other side of the Israeli-Palestinian divide.

They trade ideas through a video hookup that connects the West Bank office with one in Israel in the first joint technology venture of its kind between Israelis and Palestinians.

''Start with the optimistic parts, Mustafa,'' Gilad Parann-Nissany, an Israeli who is vice president for research and development, jokes with a Palestinian colleague who is giving a progress report. Both conference rooms break into laughter.

The goal of G.ho.st is not as lofty as peace, although its founders and employees do hope to encourage it. Instead G.ho.st wants to give users a free, Web-based virtual computer that lets them access their desktop and files from any computer with an Internet connection. G.ho.st, pronounced ''ghost,'' is short for Global Hosted Operating System.

''Ghosts go through walls,'' said Zvi Schreiber, the company's British-born Israeli chief executive, by way of explanation. A test version of the service is available now, and an official introduction is scheduled for Halloween.

The Palestinian office in Ramallah, with about 35 software developers, is responsible for most of the research and programming. A smaller Israeli team works about 13 miles away in the central Israeli town of Modiin.

The stretch of road separating the offices is broken up by checkpoints, watch towers and a barrier made of chain-link fence and, in some areas, soaring concrete walls, built by Israel with the stated goal of preventing the entry of Palestinian suicide bombers.

Palestinian employees need permits from the Israeli army to enter Israel and attend meetings in Modiin, and Israelis are forbidden by their own government from entering Palestinian cities.

When permits cannot be arranged but meetings in person are necessary, colleagues gather at a rundown coffee shop on a desert road frequented by camels and Bedouin shepherds near Jericho, an area legally open to both sides.

Dr. Schreiber, an entrepreneur who has already built and sold two other start-ups, said he wanted to create G.ho.st after seeing the power of software running on the Web. He said he thought it was time to merge his technological and commercial ambitions with his social ones and create a business with Palestinians.

''I felt the ultimate goal was to offer every human being a computing environment which is free, and which is not tied to any physical hardware but exists on the Web,'' he said. The idea, he said, was to create a home for all of a user's online files and storage in the form of a virtual PC.

Instead of creating its own Web-based software, the company taps into existing services like Google Docs, Zoho and Flickr and integrates them into a single online computing system.

G.ho.st also has a philanthropic component: a foundation that aims to establish community computer centers in Ramallah and in mixed Jewish-Arab towns in Israel. The foundation is headed by Noa Rothman, the granddaughter of Yitzhak Rabin, the Israeli prime minister slain in 1995.

''It's the first time I met Palestinians of my generation face to face,'' said Ms. Rothman, 31, of her work with G.ho.st. She said she was moved by how easily everyone got along. ''It shows how on the people-to-people level you can really get things done.''

Investors have put $2.5 million into the company so far, a modest amount. Employing Palestinians means the money goes farther; salaries for Palestinian programmers are about a third of what they are in Israel.

But Dr. Schreiber, who initially teamed up with Tareq Maayah, a Palestinian businessman, to start the Ramallah office, insists this is not just another example of outsourcing.

''We are one team, employed by the same company, and everyone has shares in the company,'' he said.

At G.ho.st's offices in Ramallah, in a stone-faced building with black reflective glass perched on a hill in the city's business district, employees say they feel part of an intensive group effort to create something groundbreaking. Among them are top young Palestinian programmers and engineers, recruited in some cases directly from universities.

The chance to gain experience in creating a product for the international market—a first for the small Palestinian technology community—means politics take a backseat to business, said Yusef Ghandour, a project manager.

''It's good we are learning from the Israeli side now,'' Mr. Ghandour said. The Israelis, he said, ''are open to the external world, and there is lots of venture capital investment in Israel, and now we are bringing that to Palestine.''

The departure of educated young people mostly to neighboring Jordan and the Persian Gulf states is a major problem for the

Palestinian economy and has been especially damaging to its technology industry. Since the Oslo peace process broke down in 2000, a wave of Israeli-Palestinian business ties have crumbled as well.

Political tensions make it somewhat unpopular for Palestinians to do business with Israelis, said Ala Alaeddin, chairman of the Palestinian Information Technology Association. He said the concept of a technology joint venture across the divide was unheard-of until G.ho.st opened its doors. A handful of Palestinian tech companies handle outsourced work for Israeli companies, but most focus on the local or Middle Eastern market.

''It's much easier to have outsourcing than a partnership,'' Mr. Alaeddin said. ''A joint venture is a long-term commitment, and you need both sides to be really confident that this kind of agreement will work.''

Benchmark Capital, a Silicon Valley venture capital firm with offices in Israel, invested $2 million in G.ho.st. Michael Eisenberg, a general partner at the firm, said Benchmark was ''in the business of risky investments,'' but that G.ho.st presented entirely new territory.

Recalling his discussions with Dr. Schreiber, Mr. Eisenberg said: ''Frankly, when he first told me about it I thought it was ambitious, maybe overly ambitious. But Zvi is a remarkable entrepreneur, and I started to feel he could actually pull this off.''

The video hookup runs continuously between the offices. Chatting in the Ramallah conference room, two Palestinian programmers wave hello to Israeli colleagues conferring over a laptop in the Modiin office.

''We are doing something across cultures and across two sides of a tough conflict,'' Dr. Schreiber said. ''I was prepared for the possibility that it might be difficult, but it hasn't been.''

ADDITIONAL STATEMENTS

EAGLE'S STORE 100TH ANNIVERSARY

• Mr. BAUCUS. Madam President, there is a little general store in West Yellowstone, MT, that has been there for 100 years. Built in 1908 when only the bravest and most determined Americans were settling the West and the State of Montana was barely 20 years old, Sam and Ida Eagle set up shop.

When Sam and Ida Eagle established Eagle's Store just outside Yellowstone Park's west entrance, they were also establishing, along with three other families, the town that we now call West Yellowstone, MT. The Eagles spent their lives in the town they helped found. They raised a family of 10 children, built their business and played a pioneering role in the community.

Sam served as the postmaster for 25 years and helped create the West Yellowstone airport. He also led the town's struggle to gain title to the properties they had settled.

The Eagle family still owns and operates Eagle's Store today on the land their ancestors received as a Presidential land grant, in a vintage store on the National Register of Historic Places.

A lot has happened in these last 100 years, and Sam and Ida Eagle and their neighbors probably could not have imagined some of the luxuries we take for granted today—coast to coast flights, television, or the Internet.

Our world is still changing, but we have got to make sure we are doing what is right for small towns everywhere. Creating good paying jobs, keeping our economy strong, and ensuring the vitality of places like West Yellowstone, is essential to who we are as Americans.

Of course, some things have not changed all that much in West Yellowstone. The sense of community, the small town values, and the commitment to a job well done still radiate from West Yellowstone's residents. They are timeless qualities still apparent everywhere around town, and they represent the very best of America.•

CONGRATULATING LEWIS-CLARK STATE COLLEGE

• Mr. CRAIG. Madam President, today I honor and congratulate one of the most successful athletic programs in the Nation that few people outside of my home State know about: The Lewis-Clark State College baseball team of Lewiston, ID.

This year, head coach Ed Cheff led the LCSC Warriors to yet another NAIA World Series championship. This year's victory makes three championships in a row for the Warriors and 16 overall, all coming in the last 25 years. Those 16 titles are far and away the most in NAIA history, with the second place school having just four.

Despite having only 3,500 students, Lewis-Clark has grown into a national baseball powerhouse under Coach Cheff's tutelage. Since Coach Cheff took over in 1977, the Warriors have put together a winning percentage of 79.8 percent. This year's 58–6 record is the latest and greatest example of his leadership.

And this success isn't just by smaller school, NAIA standards; more than a hundred of Coach Cheff's players have gone on to be drafted by Major League Baseball teams, including four this year.

Idaho does not have a franchise in any of the major sports leagues. We are known for potatoes, not winning championships. But thanks to Lewis-Clark State College baseball—and another successful Idaho college program, Boise State Bronco football—that is changing. LCSC baseball has given Idahoans a team that we can hang our hat on and be proud to call our own.

While sports are perhaps the quickest way for a school to capture headlines, a college or university can thrive only with sustained, high-quality education. Athletics alone do not make a school. The classroom must always be the foundation, and Idaho schools—from Lewis-Clark to Boise State to my alma mater, the University of Idaho—are all institutions of exceptional academic quality.

Madam President, I am proud to see more young Idahoans enjoying success, and I wanted the Senate to be aware of the achievements of the Warrior baseball team. Congratulations to Coach Cheff's team once again.•

TRIBUTE TO GEN T. MICHAEL MOSELEY

• Mr. INHOFE. Madam President, today I pay special tribute to GEN T. Michael Moseley, 18th Chief of Staff of the U.S. Air Force, who, completed 37 years of distinguished service to our Nation today. He is an exemplary patriot, extraordinary leader, and a close friend.

General Moseley began his accomplished career at Texas A&M and Webb AFB, where he earned his pilot's wings in 1973. He proceeded to a series of demanding assignments as flight instructor, test pilot and mission commander. His peerless operational skills were honed by the most prestigious positions, to include command at every level—most notably the Air Force Fighter Weapons School, the 9th Air Force, and the U.S. Central Command Air Forces. General Moseley led Airmen in peace, crisis and war—from Operation Southern Watch, through the harrowing days in the wake of 9/11, to victory over the Taliban in Operation Enduring Freedom and the destruction of Saddam Hussein's war machine in Operation Iraqi Freedom.

The breadth and depth of General Moseley's assignments and the professionalism with which he has carried them out, reflect a keen intellect, and an unrivaled grasp of national security policies and air power's role in implementing them. General Moseley tirelessly worked to reinvigorate the innovation, flexibility, creativity, and strategic thinking that have been hallmarks of America's Airmen since the dawn of aviation. In this context, General Moseley redefined the Air Force for the 21st Century, ensuring that America's guardians will continue to fly, fight and win in both today's and tomorrow's conflicts.

General Moseley has frequently testified before Congress on a wide variety of issues critical not only to the Air Force but to this Nation and its ability to meet uncertain challenges in the future. However controversial the topic or pointed the questioning, he has always provided the Members with his honest evaluation, balancing current crises with future requirements. I have been impressed by his unwavering focus on this Nation's security and ensuring that the U.S. Air Force remains the preeminent Air Force in the world, preserving America's asymmetric advantage in the air.

It was General Moseley's exceptional grasp of warfighters' needs, born of his own combatant experience, that enabled the Air Force to provide unprecedented Global Reach, Global Vigilance and Global Power for both traditional and nontraditional missions. Under his

leadership, the Air Force spread its wings over America's cities, delivered relief to victims of tsunamis and hurricanes, expanded international ties to reassure allies and deter enemies—all while flying and fighting as an indispensable part of the Joint force in Iraq, Afghanistan and other theaters of the global war on terror.

His commitment to his Airmen has been peerless. In a constrained fiscal environment—and with lives in the balance—General Moseley's uncommon courage, expertise and foresight forged a set of initiatives transforming the Air Force while simultaneously recapitalizing an aging air fleet, worn down by 18 years of continuous combat. He sought to provide his Airmen with the quality of life they deserve, while seeing to their training, education and leadership. He has refocused the Service on a single core mission: bolstering warrior ethos and fostering joint and combined synergies.

While many distinguished awards and decorations adorn his uniform—from his own grateful Nation as well as from such staunch allies as Britain, France, Korea, Brazil, Singapore, and the UAE—what stands out most and what we honor him for today is his unflinching commitment to the cause of freedom and justice. As the 18th Chief of Staff and a member of the Joint Chiefs of Staff from September 2005 to August 2008, General Moseley has been a trusted advisor on all aspects of airpower and its key role in promoting and defending America's interests at home and abroad. He remains to this day a staunch and consistent advocate of inter-Service and international cooperation as the most effective way of assuring allies, dissuading and deterring adversaries, and defeating implacable foes.

General T. Michael ''Buzz'' Moseley's 37 years of distinguished service epitomizes bold leadership, strategic vision, intellectual flexibility, innovation, honor, integrity, dignity and selfless devotion. He has earned the deepest respect from all whom he has served during his illustrious career—most notably this Congress and a grateful Nation.

I offer my sincere thanks and appreciation to GEN Buzz Moseley for his leadership, compassion, and service to the men and women of the Air Force and our country. I am honored to call you friend and pray that the Lord guard and guide you and your family as you begin the next chapter of your life.●

TRIBUTE TO COL DONALD A. PERSON

● Mr. INOUYE. Madam President, I would like to recognize a great American and true military hero who has honorably served our country for 49 years.

Colonel Person was born in Fargo, ND, and entered the Army as part of the ''Doctor Draft'' in 1964 after earning his MD from the University of Minnesota School of Medicine. He served as Chief, Preventive Medicine, Professional Standards, and Aviation Medicine, Headquarters, U.S. Army Southern Command and Officer in Charge of U.S. Army Dispensary, Fort Clayton, Panama. For the next 20 years, Dr. Person remained active in the U.S. Army Reserve. During that time, he completed neurosurgical training, and a postdoctoral fellowship in microbiology, immunochemistry, and virology at the Mayo Clinic in Rochester, MN. Subsequently he served on the faculty in internal medicine and virology and epidemiology at Baylor College of Medicine in Houston, TX. He also trained in pediatrics while at Baylor.

Colonel Person reinterred active duty in 1987 and was assigned as chief and program director in pediatrics, and chief, department of clinical investigation at Tripler Army Medical Center. He has 265 publications in the medical literature and has spoken at more than 400 meetings and seminars throughout the world. He is also a member of 60 medical, scientific, and professional organizations. He deployed to much of Central and South America, Alaska, Papau New Guinea, the Republic of the Maldives, South Korea, Micronesia, and served in Operation Desert Storm.

Additionally, Colonel Person was professor of clinical pediatrics and clinical public health, John A. Burns School of Medicine, University of Hawaii at Manoa. For his leadership in the development and sustainment of the Pacific Island Health Care Project, he was recognized by the Pacific Basin Medical Association by the indigenous people of the U.S. Associated Pacific Islands and by the legislatures of the Republic of Palau, the Federated States of Micronesia and the Republic of the Marshall Islands.

Throughout his career COL Donald A. Person has served with valor and profoundly impacted the entire Army Medical Department. His performance reflects exceptionally on himself, the U.S. Army, the Department of Defense, and the United States of America. I extend my deepest appreciation to Colonel Person on behalf of a grateful Nation for his more than 49 years of dedicated military service.●

100TH ANNIVERSARY OF SMART MOTORS, INC.

● Mr. KOHL. Madam President, I would like to acknowledge the 100th anniversary of Smart Motors, Inc., a family-owned business in Madison, WI. Smart Motors, Inc. began in 1908 when founder O.D. Smart sold his first car, an Apperson-Jackrabbit. A far cry from today's complex automobile business, the operation O.D. began was very straightforward—involving little more than a handshake, a cash payment and a bill of sale.

Since those early days, Smart Motors has successfully added services such as finance and insurance as well as a service and parts department to satisfy their customers and to remain competitive in today's competitive car sales industry.

Madam President, 2008 marks a milestone for Smart Motors which not even O.D. Smart could have anticipated when he made his first car sale in 1908. But his guiding principle to ''treat people with respect, honesty, equality, and integrity'' has served the company well. I am proud to have such a hard-working and respected family business in Wisconsin. I congratulate their high level of performance over the past 100 years and wish them all the best as they enter their second century of business.●

U.S. MATHEMATICAL OLYMPIAD

● Mr. LEAHY. Madam President, I would like to pay tribute to two outstanding Vermont students, Colin Sandon, of Essex, and David Rolnick, of Rupert. These two high school students both placed in the top 12 finishers in this country's highest precollegiate math competition, the U.S. Mathematical Olympiad, which took place in May. In the 34-year history of the Olympiad, this is the first time any Vermonter has made it this far and this year my state had two students accomplish this incredible achievement.

Colin and David, at the ages of 18 and 16 respectively, have been preparing to compete at this level of mathematical competition their entire educational careers. They have achieved this goal through their own hard work and perseverance, and also through the support of their parents and teachers. David benefited from being homeschooled by his parents. The Vermont State Math Coalition identified Colin in the first grade, and he began tutoring outside of the classroom by engineers and physicists at IBM. Three years ago, he began taking high-level math classes at the University of Vermont.

Both students have also benefited from the dedication of Anthony Trono, who retired from teaching at Burlington High School in 1992, but has played a key role in training Vermont's talented math students. Anthony directs the Governor's Institute in Mathematical Sciences, a week-long residential program for students held every year at the University of Vermont that both Colin and David attended. Anthony also runs the Vermont State Mathematics Coalition Talent Search. He will retire this year and Colin and David's success this year is a testament to the many years he has invested in Vermont's students.

This month, Colin will compete on a six-student team which will represent the U.S. in the 49th annual International Math Olympiad. In the fall, both Colin and David will attend the Massachusetts Institute of Technology. I congratulate them and their families on their accomplishments and I wish

them the best of luck in what I am sure will be bright futures.

Madam President, I ask to have an article from the Burlington Free Press detailing their accomplishments be printed in the RECORD.

The material follows:

TWO REACH APEX IN MATH COMPETITION, ESSEX, RUPERT TEENS AMONG NATION'S BEST

(By Matt Ryan)

Six congruent circles are arranged inside a larger circle so that each small circle is tangent to two other small circles and is tangent to the large circle. The radius of the large circle is 2007 centimeters. Find the radius of the small circles.

For Colin Sandon of Essex and David Rolnick of Rupert, this problem was preparation for a series of increasingly selective math competitions. The two high schoolers placed in the Top 12—Sandon tied for first place—in the country's highest pre-collegiate math competition last week. They will try out in June for a national, six-person math team that will compete internationally in Madrid.

Sandon, 18, and Rolnick, 16, are the first Vermont students to place in the Top 12 at the U.S. Mathematical Olympiad in at least a decade, according to the Mathematical Association of America. Anthony Trono, who has been training Vermont's math prodigies since he retired from teaching at Burlington High School in 1992, said, as far as he knew, they were the state's first students to accomplish the feat. The Olympiad began in 1974.

Trono, 80, of Colchester conceived the sample problem above and provided The Burlington Free Press its solution: 669 centimeters. Four times a year, he mails a sample exam with eight such problems to Vermont's high schools to test the waters for up-and-coming whizzes. The problems, like those found on exams for the American Math Competition, the American Invitational Math Exam and the Olympiad—the three tiers of the national math tournament through which Sandon and Rolnick advanced—involve applications up to pre-calculus.

''Some of these problems aren't even algebra, it's just arithmetic, but you gotta use your head to solve them,'' Trono said. ''They usually have to prove something is true, derive some kind of formula, or solve a very, very complex problem.''

During the course of the tournament, the field narrowed from 500,000 students—including some from Canada—to the 500 who competed in the Olympiad.

Students in the competitions generally take the exams at their high schools. Sandon took his at Essex High School and Rolnick, who is homeschooled, took his at Middlebury College. Students were allotted 4 1/2 hours on two consecutive days to complete the Olympiad's six problems. The highest scorer, Sandon, a senior, and Rolnick, a junior, have been accepted to and plan to enroll at the Massachusetts Institute of Technology in the fall.

''I'm kind of nervous, because I've never been away from home for more than a month, and MIT will be my home for the next four years,'' Sandon said. ''On the other hand, I'll get to meet new people there and take more challenging classes.''

Sandon has sought more challenging classes since elementary school.

The Vermont State Math Coalition discovered Sandon when he was in first grade. Engineers and physicists from IBM tutored the boy for the next few years, as his capacity for math exceeded that of his teachers. He finished pre-calculus in sixth grade, and began taking courses at the University of Vermont three years ago. His course load includes calculus III, linear algebra, graph theory and number theory.

His goal was to crack the Top 12 in the Olympiad.

''I felt like I had done pretty well, but I didn't think I had done that well,'' Sandon said.

His parents, Peter and Maureen Sandon, an engineer at IBM and a retired home economics teacher, respectively, said the announcement surprised them, too.

''We had a message on our answering machine,'' Maureen Sandon said. ''I said, 'Wait a minute, what did this message say?' I must have replayed it three times.''

Peter Sandon said his son left him behind ''quite a while ago'' in math.

''I used to play chess with him, too, and I used to be able to beat him,'' Peter Sandon said. ''And now I can't.''

Colin Sandon said he enjoys strategy games, and also likes to read science fiction and fantasy.

THE RENAISSANCE MAN

Rolnick said he also enjoys strategy games—as well as hiking; tennis; word play; reading; writing; talking; listening to classical composers, such as Bach, Beethoven, Haydn, Schubert and Tchaikovsky; and studying moths.

Tiny white moths are boring, Rolnick said. He prefers the variety of larger moths with scarlets, violets, yellows, greens, silvers and golds.

''I have had the fortune to grow up in a household with parents who did not cause me to be afraid of insects,'' Rolnick said. He blasted the ''societal prejudice against insects'' that assumes all bugs ''bite, sting or eat furniture.''

Rolnick sees beauty in moths and math.

''Geometry I find easier to talk about,'' Rolnick said. ''I love the way that things that are true, really are true.''

''If you have a triangle, and you join the vertices to the midpoints of the opposite side, you come up with three lines. Those lines will come to a point—those three lines will always meet—and I find that very beautiful.''

Problem solving becomes increasingly important as students advance through the competitions, Rolnick said.

''For all the problems, there is a certain amount of thinking and puzzling that is absolutely necessary,'' Rolnick said.

''It is absolutely hard,'' he said of the Olympiad. ''It is meant to be hard, even for professional mathematicians.''

TRONO RETIRES

Sandon and Rolnick attended the Governor's Institute in Mathematical Sciences, a week-long residential program for students held at UVM during the summer.

Trono has directed the institute and run the Vermont State Mathematics Coalition Talent Search—for which he mails high schools his sample exams—since the early 1990s. He said he will retire from the institute this year.

''This has been a terrific year for me to go out,'' Trono said.

He said he has 10,000 ''super, very good problems''—those that did not make the cut for previous sample exams—to give his successors a head start.●

REMEMBERING ROBERT LEENEY

● Mr. LIEBERMAN. Madam President, New Haven has lost a friend, a neighbor, and a teacher, with the passing of Robert Leeney, the longtime editor of the New Haven Register. In his career at the Register, Bob informed, educated, and entertained us in many roles, including as an editorial writer, reporter, book editor, Broadway columnist, and theatre critic.

Bob's weekly column in the paper, the ''Editor's Note''—which he remarkably wrote from April 6, 1974 to April 7, 2007, without missing even a single week—was a must-read column that brightened up our Saturday mornings. Evident in his writing was his love of New Haven, often reminding us what we may have missed, and through him it is true to say that our love of New Haven increased.

In his columns, Bob rarely strayed from local nonpolitical topics, but when he did it was often to remind us about the greatness of our country, the value of service, or to urge politicians to look beyond partisan politics. And Bob always did this with a grace and delivery that ensured his words made their impact.

His writing often brought to life, and made us yearn for, an earlier age. In his last July 4th column, published on June 30, 2007, for instance, Bob wrote about the celebrations in the 1920s. It was a time, he wrote, when: ''In every family, the youngsters were chipping in long-saved nickels and dimes to build a fireworks fund for the front porch displays that illuminated streets and lawns, beaches and boat docks in salute to American independence and the personal freedom it signified for all the world.''

Just as Bob's professional life was marked by his scholarship and talented writing and reporting, his personal life, too, was marked by his dedication to New Haven and to his being the consummate gentleman. His service to our community did not end with his journalism, and in his spare time he served our community in many roles. Indeed, his life was twinned with that of New Haven, especially in its artistic and religious life.

To give just a few examples of his extensive public service, Bob served as vice president of the New Haven Arts Council and on the city committee that worked to reopen the Shubert. Once the theatre was reopened, he served on its board.

His interests and service was not limited to the arts. Bob served as a director of the Greater New Haven Chamber of Commerce and was a member of the State Education Commission's Connecticut Education Council. He also sat on the committee tasked with establishing a Holocaust memorial, as well as on other committees.

Bob was a religious man, and in recognition for his service to the Catholic Church, Pope John Paul II appointed him a Knight of St. Gregory. Bob also received numerous other awards, including Connecticut Anti-Defamation League's First Amendment Freedoms Award—of which he was the first ever recipient.

It can be said about Bob that he left our society better off for the wisdom

and humanity he taught us both in his writings, in his personal life of honor, and in his public service.

Bob's wife Anne passed away in 1990, and I remember him writing that after she died he went to bed and ''touched the pillow where the moonlight and the memory fused and whispered, 'Much ado about nothing, old girl'—and went to sleep.'' Hadassah and I extend our condolences to his family, the Register, and the entire community. We will miss you, Bob.●

RECOGNIZING NATIONAL LIFE GROUP OF VERMONT

● Mr. SANDERS. Madam President, I would like to recognize the National Life Group of Vermont for the impact this company is having in the field of renewable energy, energy efficiency, and environmental stewardship in my State of Vermont. National Life, a Fortune 1000 financial services and insurance firm based in Montpelier, is actively moving forward with a significant solar project at its headquarters.

National Life announced in May that it will install 240 300-watt solar panels on the roof of its Montpelier headquarters. This will be one of the largest, if not the largest, solar electric installations in Vermont. The solar panels are expected to be installed and running by September, and they estimate that the system will generate 77,767 kilowatt-hours a year. The 72 kW Photovoltaic, PV, system will generate enough electricity to power 13 average Vermont homes.

The $500,000 project will be financed in part through a $200,000 grant from the State of Vermont's Clean Energy Development Fund, which is administered by the Department of Public Service.

National Life has contracted Solar Works of Montpelier to handle the installation. Solar Works is the leading solar electric systems provider in the Northeast.

National Life is also working on a separate proposal to install a solar hot water system at the building. Both solar projects are part of a larger plan, begun 5 years ago, to transform the company's Montpelier headquarters into a ''green'' campus. An important plan objective will be realized at the end of 2008, when the company expects to win a coveted LEED certification. LEED—Leadership in Energy and Environmental Design—is the nationally accepted benchmark for the design, construction, and operation of high-performance green buildings. Impressively, experts say LEED certification for National Life's headquarters would be the first for a 50-year-old facility anywhere in the Nation.

Tom MacLeay, the CEO of National Life, has driven this entire green initiative. A Vermont native who has worked at National Life for 32 years, Tom recently announced that he would be retiring at the end of this year. It is certainly worth noting that the company's commitment to environmental leadership is a testimony to his vision of the ways in which business can help achieve a secure environmental future for this Nation.

Solar is not the only area in which National Life has shown its environmental stewardship. Every 10 days National Life sends its shredded paper to Fairmont Farms, a dairy farm in East Montpelier, to be used as bedding for the cows and mixed into fertilizer for the fields. In 2007 they recycled 64 percent of their waste, including paper, plastic, shredded material, aluminum, metal, food composting, and computer equipment.

In 2007 National Life transformed the offices of its Human Resources Department into a showcase for leading-edge green technology, using carpet with no volatile organic compounds, VOC, occupancy sensors, glass walls and automatic window blinds that allow light to pass through while keeping the heat out in the summer and the cold out in the winter. The new lighting technology put in place at its headquarters—with fixtures that are 95 percent efficient compared to the 50-percent efficiency of existing fixtures—will cut the company's electric bill in half.

The company's Alternate Transportation Program offers incentives such as free bike tuneups, gas cards, free bus passes, and shoe discounts for those who carpool, bike, use bus service, or walk or run to and from work.

These accomplishments are not just environmentally sound, they illustrate smart business decisions. By reducing its greenhouse gas emissions, Vermont Life is cutting its electric bills and saving serious money too. And by pushing the boundaries of what can be done, it is setting an example for other companies.

What they are accomplishing with solar energy in Vermont, which is not a particularly sunny State, demonstrates what is possible to achieve right now if the will is there to carry it through.

Mr. President, I look forward to the day when renewable energy and conservation have become so commonplace in our society that they are no longer looked upon as being unusual or path-breaking but are seen as totally ordinary, a normal part of the landscape. When that day comes, and I believe that it will, we will be able to look back to a handful of environmentally aware companies, such as National Life, that helped show us the way toward our sustainable energy society.●

HONORING RAYE'S MUSTARD MILL

● Ms. SNOWE. Madam President, today I wish to recognize a small business from my home State of Maine whose roots spring from both our State's seafaring heritage and agricultural legacy. Raye's Mustard Mill in Eastport has long provided locals with the perfect condiment to top almost any meal from the once traditional sardine to the timeless summer classic of burgers and hot dogs.

Raye's Mustard, founded in 1900 by J. Wesley Raye, has been operating at its current location in Eastport, America's easternmost city, since 1903, when a young Wes Raye decided to move out of the family smokehouse and into a more commercially viable location. When the company's mustard was first produced, it provided the perfect complement to the sardines being caught and consumed by Maine fishermen. While times have changed, Raye's mustard has consistently remained a Maine culinary staple. It has continued to accompany new dishes while it is still made using many of the same techniques that Mr. Raye employed over 100 years ago. Indeed, Raye's is the only remaining traditional stone ground mustard mill in America, and the firm uses a time-honored cold grind method for preparing its product, slowly grinding mustard seeds and other ingredients together using massive pieces of stone.

Raye's distinctive technique has succeeded in producing numerous award-winning mustards that have been recognized by culinary organizations nationwide. Raye's 21 mustard varieties have been featured in publications, including ''Martha Stewart Living'' and ''Yankee Magazine.'' With varieties ranging from the Downeast Schooner, Raye's classic yellow mustard; to more innovative flavors, like the spicy Heavenly Jalapeno, the firm has managed to produce mustards to satisfy any palate. Furthermore, its special line of select mustards provide a hint of Maine in every jar, as the company has partnered with local restaurants and breweries to produce signature items such as Raye's Jameson Tavern Style and Raye's Sea Dog Beer Mustard.

While Raye's Mustard is sold in stores regionally and worldwide via the internet, just as unchanging as the mustard itself are the Mustard Mill and The Pantry Store, Raye's on-site retail location. In fact, in 2006, these Eastport institutions garnered the Maine Tourism Association's Down East and Acadia Regional Tourism Award. Tours of the mill give visitors the opportunity to learn about the history of one of the most universal food products in the world and to see first hand the valiant spirit and commitment to quality that have driven Raye's to the impressive heights that it has achieved.

In addition to the respect that I have for Raye's Mustard Mill as a small family-owned business, I also have a great personal esteem for its fourth generation of owners. I have long known Kevin and Karen Raye as friends and colleagues, and I have been particularly pleased to see the successes they have achieved since Kevin left Capitol Hill after serving as chief of staff for many years. It is with great admiration that I wish Raye's Mustard the

best of luck as it continues to excel at making distinct products that have earned accolades from discerning clients and culinary greats alike.●

MESSAGE FROM THE HOUSE

At 5:10 p.m., a message from the House of Representatives, delivered by Mrs. Cole, one of its reading clerks, announced that the House has passed the following bills, in which it requests the concurrence of the Senate:

H.R. 1423. An act to authorize the Secretary of the Interior to enter into a partnership with the Porter County Convention, Recreation and Visitor Commission regarding the use of the Dorothy Buell Memorial Visitor Center as a visitor center for the Indiana Dunes National Lakeshore, and for other purposes.

H.R. 3981. An act to authorize the Preserve America Program and Save America's Treasures Program, and for other purposes.

H.R. 4199. An act to amend the Dayton Aviation Heritage Preservation Act of 1992 to add sites to the Dayton Aviation Heritage National Historical Park, and for other purposes.

H.R. 5741. An act 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.

H.R. 5975. An act to designate the facility of the United States Postal Service located at 101 West Main Street in Waterville, New York, as the ''Cpl. John P. Sigsbee Post Office''.

H.R. 6092. An act to designate the facility of the United States Postal Service located at 101 Tallapoosa Street in Bremen, Georgia, as the ''Sergeant Paul Saylor Post Office Building''.

MEASURES REFERRED

The following bills were read the first and the second times by unanimous consent, and referred as indicated:

H.R. 1423. An act to authorize the Secretary of the Interior to enter into a partnership with the Porter County Convention, Recreation and Visitor Commission regarding the use of the Dorothy Buell Memorial Visitor Center as a visitor center for the Indiana Dunes National Lakeshore, and for other purposes; to the Committee on Energy and Natural Resources.

H.R. 4199. An act to amend the Dayton Aviation Heritage Preservation Act of 1992 to add sites to the Dayton Aviation Heritage National Historical Park, and for other purposes; to the Committee on Energy and Natural Resources.

H.R. 5741. An act 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,

H.R. 5975. An act to designate the facility of the United States Postal Service located at 101 West Main Street in Waterville, New York, as the ''Cpl. John P. Sigsbee Post Office''; to the Committee on Homeland Security and Governmental Affairs.

H.R. 6092. An act to designate the facility of the United States Postal Service located at 101 Tallapoosa Street in Bremen, Georgia, as the ''Sergeant Paul Saylor Post Office Building''; to the Committee on Homeland Security and Governmental Affairs.

MEASURES PLACED ON THE CALENDAR

The following bill was read the first and second times by unanimous consent, and placed on the calendar:

H.R. 3981. An act to authorize the Preserve America Program and Save America's Treasures Program, and for other purposes.

MEASURES READ THE FIRST TIME

The following bill was read the first time:

S. 3236. A bill to amend titles XVIII and XIX of the Social Security Act to extend provisions under Medicare and Medicaid programs, and for other purposes.

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–7027. A communication from the Associate General Counsel for Legislation and Regulations, Office of Housing, Department of Housing and Urban Development, transmitting, pursuant to law, the report of a rule entitled ''Revisions to the Hospital Mortgage Insurance Program: Technical and Clarifying Amendments Final Rule'' ((RIN2502-AI22)(FR-4927-F-03)) received on July 7, 2008; to the Committee on Banking, Housing, and Urban Affairs.

EC–7028. A communication from the Chief Counsel, Federal Emergency Management Agency, Department of Homeland Security, transmitting, pursuant to law, the report of a rule entitled ''Final Flood Elevation Determinations'' (73 FR 35953) received on July 7, 2008; to the Committee on Banking, Housing, and Urban Affairs.

EC–7029. A communication from the Chief Counsel, Federal Emergency Management Agency, Department of Homeland Security, transmitting, pursuant to law, the report of a rule entitled ''Final Flood Elevation Determinations'' (73 FR 35958) received on July 7, 2008; to the Committee on Banking, Housing, and Urban Affairs.

EC–7030. A communication from the Chief Counsel, Federal Emergency Management Agency, Department of Homeland Security, transmitting, pursuant to law, the report of a rule entitled ''Changes in Flood Elevation Determinations'' (73 FR 35077) received on July 2, 2008; to the Committee on Banking, Housing, and Urban Affairs.

EC–7031. A communication from the Chief Counsel, Federal Emergency Management Agency, Department of Homeland Security, transmitting, pursuant to law, the report of a rule entitled ''Final Flood Elevation Determinations'' (73 FR 35079) received on July 2, 2008; to the Committee on Banking, Housing, and Urban Affairs.

EC–7032. A communication from the Chief Counsel, Federal Emergency Management Agency, Department of Homeland Security, transmitting, pursuant to law, the report of a rule entitled ''Final Flood Elevation Determinations'' (73 FR 35083) received on July 2, 2008; to the Committee on Banking, Housing, and Urban Affairs.

EC–7033. A communication from the Acting Assistant Secretary for Export Administration, Bureau of Industry and Security, Department of Commerce, transmitting, pursuant to law, the report of a rule entitled ''Implementation of the Understandings Reached at the April 2008 Australia Group Plenary Meeting; Additions to the List of States Parties to the Chemical Weapons Convention'' (RIN0694-AE36) received on July 8, 2008; to the Committee on Banking, Housing, and Urban Affairs.

EC–7034. A communication from the Executive Vice President, Financial Information Group, Federal Home Loan Bank of Chicago, transmitting, pursuant to law, the Bank's management reports for fiscal year 2007; to the Committee on Banking, Housing, and Urban Affairs.

EC–7035. A communication from the Acting Assistant Administrator for Fisheries, National Oceanic and Atmospheric Administration, Department of Commerce, transmitting, pursuant to law, a report entitled, ''2007 Status of U.S. Fisheries''; to the Committee on Commerce, Science, and Transportation.

EC–7036. A communication from the Deputy Assistant Administrator, National Marine Fisheries Service, Department of Commerce, transmitting, pursuant to law, the report of a rule entitled ''Final Rule to Implement Amendment 2 to the Consolidated Atlantic Highly Migratory Species Fishery Management Plan'' (RIN0648-AU89) received on July 7, 2008; to the Committee on Commerce, Science, and Transportation.

EC–7037. A communication from the Assistant Bureau Chief, Enforcement Bureau, Federal Communications Commission, transmitting, pursuant to law, the report of a rule entitled ''Amendment of Section 1.80(b) of the Commission's Rules: Adjustment of Forfeiture Maxima to Reflect Inflation'' (FCC 08-159) received on July 7, 2008; to the Committee on Commerce, Science, and Transportation.

EC–7038. A communication from the Chief of Staff, Media Bureau, Federal Communications Commission, transmitting, pursuant to law, the report of a rule entitled ''Amendment of Section 73.202(b), Table of Allotments, FM Broadcast Stations; Harper, Texas'' (MB Docket No. 07-211) received on July 7, 2008; to the Committee on Commerce, Science, and Transportation.

EC–7039. A communication from the Deputy Chief, Consumer and Governmental Affairs Bureau, Federal Communications Commission, transmitting, pursuant to law, the report of a rule entitled ''In the Matter of Rules and Regulations Implementing the Telephone Consumer Protection Act of 1991, Report and Order'' (FCC 08-147) received on July 7, 2008; to the Committee on Commerce, Science, and Transportation.

EC–7040. A communication from the Chief of Staff, Media Bureau, Federal Communications Commission, transmitting, pursuant to law, the report of a rule entitled ''Amendment of Section 73.202(b), Table of Allotments, FM Broadcast Stations; Dededo, Guam'' (MB Docket No. 08-12) received on July 7, 2008; to the Committee on Commerce, Science, and Transportation.

EC–7041. A communication from the Acting Assistant Administrator for Fisheries, National Marine Fisheries Service, Department of Commerce, transmitting, pursuant to law, the report of a rule entitled ''Fisheries of the Northeastern United States; Northeast Multispecies Fishery; Scallop Dredge Exemption Areas; Addition of Monkfish Incidental Catch Trip Limits'' (RIN0648-AW31) received on July 2, 2008; to the Committee on Commerce, Science, and Transportation.

EC–7042. A communication from the Acting Director, Office of Sustainable Fisheries, Department of Commerce, transmitting, pursuant to law, the report of a rule entitled ''Fisheries of the Economic Exclusive Zone Off Alaska; Deep-Water Species Fishery by Catcher Processor Rockfish Cooperatives in the Gulf of Alaska'' (RIN0648-XI39) received on July 2, 2008; to the Committee on Commerce, Science, and Transportation.

EC–7043. A communication from the Acting Director, Office of Sustainable Fisheries, Department of Commerce, transmitting, pursuant to law, the report of a rule entitled ''Fisheries of the Exclusive Economic Zone Off Alaska; Northern Rockfish, Pacific Ocean Perch, and Pelagic Shelf Rockfish for Catcher Vessels Participating in the Limited Access Rockfish Fishery in the Central Regulatory Area of the Gulf of Alaska'' (RIN0648-XI37) received on July 2, 2008; to the Committee on Commerce, Science, and Transportation.

EC–7044. A communication from the Acting General Counsel, Department of Commerce, transmitting a legislative proposal to reauthorize the National Sea Grant College Program Act; to the Committee on Commerce, Science, and Transportation.

EC–7045. A communication from the Assistant Secretary, Federal Maritime Commission, transmitting, pursuant to law, a report on the Commission's proposed systems of records subject to the Privacy Act; to the Committee on Commerce, Science, and Transportation.

EC–7046. A communication from the Chairman, Surface Transportation Board, Department of Transportation, transmitting, pursuant to law, the report of a rule entitled ''Regulations Governing Fees for Services Performed in Connection with Licensing and Related Services—2008 Update'' (STB Ex Parte No. 542) received on July 2, 2008; to the Committee on Commerce, Science, and Transportation.

EC–7047. A communication from General Counsel, Federal Energy Regulatory Commission, transmitting, pursuant to law, the report of a rule entitled ''Promotion of a More Efficient Capacity Release Market'' (RIN1902-AD48) received on July 2, 2008; to the Committee on Environment and Public Works.

EC–7048. A communication from the Assistant Secretary of the Army (Civil Works), transmitting, pursuant to law, a report on a feasibility study that was undertaken to evaluate flood damage reduction opportunities for the May Branch at Fort Smith, Arkansas; to the Committee on Environment and Public Works.

EC–7049. A communication from the Director, Regulatory Management Division, Environmental Protection Agency, transmitting, pursuant to law, the report of a rule entitled ''Ammonium Soap Salts of Higher Fatty Acids (C8–C18 saturated; C8–C12) unsaturated; Exemption from the Requirement of Tolerance'' (FRL No. 8372–2) received on July 8, 2008; to the Committee on Environment and Public Works.

EC–7050. A communication from the Director, Regulatory Management Division, Environmental Protection Agency, transmitting, pursuant to law, the report of a rule entitled ''Spirotetramat; Pesticide Tolerances'' (FRL No. 8367–1) received on July 8, 2008; to the Committee on Environment and Public Works.

EC–7051. A communication from the Director, Regulatory Management Division, Environmental Protection Agency, transmitting, pursuant to law, the report of a rule entitled ''Revisions to the California State Implementation Plan, Northern Sierra Air Quality Management District, Including Nevada County Air Pollution Control District Portion, Plumas County Air Pollution Control District Portion, and Sierra County Air Pollution Control District Portion'' (FRL No. 8569–6) received on July 8 , 2008; to the Committee on Environment and Public Works.

EC–7052. A communication from the Director, Regulatory Management Division, Environmental Protection Agency, transmitting, pursuant to law, the report of a rule entitled ''Gamma-Cyhalothrin; Pesticide Tolerances'' (FRL No. 8372–6) received on July 8, 2008; to the Committee on Environment and Public Works.

EC–7053. 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 Plants; Texas; Control of Air Pollution from Volatile Organic Compounds'' (FRL No. 8689–7) received on July 8, 2008; to the Committee on Environment and Public Works.

EC–7054. A communication from the Director, Regulatory Management Division, Environmental Protection Agency, transmitting, pursuant to law, the report of a rule entitled ''Azocystrobin; Pesticide Tolerances'' (FRL No. 8371–9) received on July 8, 2008; to the Committee on Environment and Public Works.

EC–7055. A communication from the Director, Regulatory Management Division, Environmental Protection Agency, transmitting, pursuant to law, the report of a rule entitled ''Sethoxydim; Pesticide Tolerances'' (FRL No. 8370–9) received on July 8, 2008; to the Committee on Environment and Public Works.

EC–7056. A communication from the Administrator, Environmental Protection Agency, transmitting a legislative proposal to implement an important new treaty for the protection of aquatic life and the marine environment; to the Committee on Environment and Public Works.

EC–7057. A communication from the Administrator, Environmental Protection Agency, transmitting a legislative proposal to implement a treaty on the protection of the world's oceans from ocean dumping; to the Committee on Environment and Public Works.

EC–7058. A communication from the Secretary, Department of Transportation, transmitting, pursuant to law, a report on the Safe, Accountable, Flexible, Efficient Transportation Equity Act; to the Committee on Environment and Public Works.

EC–7059. A communication from Chairman, Nuclear Regulatory Commission, transmitting proposed legislation which authorizes appropriations fiscal year 2009; to the Committee on Environment and Public Works.

EC–7060. 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 ''Auction Rate Preferred Stock—Effect of Liquidity Facilities on Equity Character'' (Notice 2008–55) received on July 7, 2008; to the Committee on Finance.

EC–7061. 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 ''Modifications to Subpart F Treatment of Aircraft and Vessel Leasing Income'' ((RIN1545–BH03)(TD 9406)) received on July 8, 2008; to the Committee on Finance.

EC–7062. 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 ''Revised Coordinated Issue: Employee Tool and Equipment Plans'' (LMSB–04–0608–037) received on July 8, 2008; to the Committee on Finance.

EC–7063. 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 ''Relief from Certain Low-Income Housing Credit Requirements Due to Severe Storms, Tornadoes, and Flooding in Wisconsin'' (Notice 2008–61) received on July 8, 2008; to the Committee on Finance.

EC–7064. 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 ''Relief from Certain Low-Income Housing Credit Requirements Due to Severe Storms, Tornadoes, and Flooding in Iowa'' (Notice 2008–58) received on July 8, 2008; to the Committee on Finance.

EC–7065. 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 ''Relief from Certain Low-Income Housing Credit Requirements Due to Severe Storms and Flooding in Indiana'' (Notice 2008–56) received on July 8, 2008; to the Committee on Finance.

EC–7066. 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 ''Update to Revenue Procedure 2008–12'' (Rev. Proc. 2008–35) received on July 8, 2008; to the Committee on Finance.

EC–7067. 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 ''Puerto Rican Plans'' (Rev. Rul. 2008–40) received on July 8, 2008; to the Committee on Finance.

EC–7068. 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 ''Interim Guidance on the Application of Section 457(f) to Certain Recurring Part-Year Compensation'' (Notice 2008–62) received on July 8, 2008; to the Committee on Finance.

EC–7069. 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 ''Amendments to the Section 7216 Regulations—Disclosure or Use of Information by Preparers of Returns'' ((RIN1545–BI01)(TD 9409)) received on July 8, 2008; to the Committee on Finance.

EC–7070. 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 ''Dependent Child of Divorced or Separated Parents or Parents Who Live Apart'' (TD 9408) received on July 8, 2008; to the Committee on Finance.

EC–7071. A communication from the Acting Assistant Secretary, Office of Legislative Affairs, Department of State, transmitting, pursuant to law, the certification of an application for the export of defense services to support the manufacture of baseline ''green'' configured Sikorsky S–70i Blackhawk Helicopters; to the Committee on Foreign Relations.

EC–7072. A communication from the Acting Assistant Secretary, Office of Legislative Affairs, Department of State, transmitting, pursuant to law, the certification of a proposed technical assistance agreement for the export of technical data in support of the Emirates Air Defense Ground Element and TPS–78 Radar Systems for the United Arab Emirates Low Altitude Surveillance System Program; to the Committee on Foreign Relations.

EC–7073. A communication from the Acting Assistant Secretary, Office of Legislative Affairs, Department of State, transmitting, pursuant to law, certification of the fact that no United Nations organization or affiliated agency grants any official status to any organization which promotes and condones or seeks the legalization of pedophilia; to the Committee on Foreign Relations.

EC–7074. A communication from the Assistant Secretary, Office of Legislative Affairs, Department of State, transmitting, pursuant to law, texts of Conventions and Recommendations that were adopted by the International Labor Conference at Geneva; to the Committee on Foreign Relations.

EC–7075. A communication from the Chairman, Council of the District of Columbia, transmitting, pursuant to law, a report on D.C. Act 17–419, ''Fiscal Year 2009 Budget Support Act of 2008'' received on July 8, 2008; to the Committee on Homeland Security and Governmental Affairs.

EC–7076. A communication from the Chairman, Council of the District of Columbia, transmitting, pursuant to law, a report on D.C. Act 17–407, ''Wards 4, 7, and 8 Anti-Sale of Single Containers of Alcoholic Beverages Act of 2008'' received on July 7, 2008; to the Committee on Homeland Security and Governmental Affairs.

EC–7077. A communication from the Chairman, Council of the District of Columbia, transmitting, pursuant to law, a report on D.C. Act 17–406, ''Compensation and Holdover Clarification Amendment Act of 2008'' received on July 7, 2008; to the Committee on Homeland Security and Governmental Affairs.

EC–7078. A communication from the Chairman, Council of the District of Columbia, transmitting, pursuant to law, a report on D.C. Act 17–405, ''Financial Literacy Council Establishment Act of 2008'' received on July 7, 2008; to the Committee on Homeland Security and Governmental Affairs.

EC–7079. A communication from the Chairman, Council of the District of Columbia, transmitting, pursuant to law, a report on D.C. Act 17–404, ''Noise Control Protection Amendment Act of 2008'' received on July 7, 2008; to the Committee on Homeland Security and Governmental Affairs.

EC–7080. A communication from the Director, Office of Personnel Management, transmitting, pursuant to law, the Office's Federal Activities Inventory Reform Act Inventory Summary as of June 30, 2007; to the Committee on Homeland Security and Governmental Affairs.

EC–7081. A communication from the Administrator, Federal Emergency Management Agency, Department of Homeland Security, transmitting, pursuant to law, notification of the fact that the cost of response and recovery efforts for FEMA–3283–EM in the State of Illinois has exceeded the limit for a single emergency declaration; to the Committee on Homeland Security and Governmental Affairs.

EC–7082. A communication from the Acting Administrator, General Services Administration, transmitting notification that the Administration has made public its approval letter relative to its Commercial and Inherently Governmental Activities Inventories for fiscal year 2007; to the Committee on Homeland Security and Governmental Affairs.

EC–7083. A communication from the Director, Office of Management and Budget, Executive Office of the President, transmitting, pursuant to law, a report entitled, ''2007 Report to Congress on the Benefits and Costs of Federal Regulations and Unfunded Mandates on State, Local, and Tribal Entities''; to the Committee on Homeland Security and Governmental Affairs.

EC–7084. A communication from the Assistant Secretary, Office of Legislative Affairs, Department of Homeland Security, transmitting, pursuant to law, a report relative to the Department's Other Transaction Authority; to the Committee on Homeland Security and Governmental Affairs.

EC–7085. A communication from the Chief of the Trade and Commercial Regulations Branch, Customs and Border Protection, Department of Homeland Security, transmitting, pursuant to law, the report of a rule entitled ''Technical Corrections to Customs and Border Protection Regulations'' (CBP Dec. No. 08–25) received on July 8, 2008; to the Committee on Homeland Security and Governmental Affairs.

EC–7086. A communication from the Deputy Archivist of the United States, National Archives and Records Administration, transmitting, pursuant to law, the report of a rule entitled ''Use of Meeting Rooms and Public Space'' (RIN3095–AB33) received on July 7, 2008; to the Committee on Homeland Security and Governmental Affairs.

EC–7087. A communication from the Secretary of Labor, transmitting a draft bill intended to establish authority for the Secretary to impose a fee on employers submitting applications to the Department for the certification of temporary employment of non-immigrant aliens under the H–2B non-agricultural worker visa program; to the Committee on the Judiciary.

EC–7088. A communication from the Director of Regulations Management, Veterans Health Administration, Department of Veterans Affairs, transmitting, pursuant to law, the report of a rule entitled ''Beneficiary Travel Under 38 U.S.C. 111 Within the United States'' (RIN2900–AM02) received on July 2, 2008; to the Committee on Veterans' Affairs.

EXECUTIVE REPORTS OF COMMITTEES

The following executive reports of nominations were submitted:

By Mr. HARKIN for the Committee on Agriculture, Nutrition, and Forestry.

*Walter Lukken, of Indiana, to be Chairman of the Commodity Futures Trading Commission.

*Bartholomew H. Chilton, of Delaware, to be a Commissioner of the Commodity Futures Trading Commission for a term expiring April 13, 2013.

*Scott O'Malia, of Michigan, to be a Commissioner of the Commodity Futures Trading Commission for a term expiring April 13, 2012.

By Mr. AKAKA for the Committee on Veterans' Affairs.

*Christine O. Hill, of Georgia, to be an Assistant Secretary of Veterans Affairs (Congressional Affairs).

*Nomination was reported with recommendation that it be confirmed subject to the nominee's commitment to respond to requests to appear and testify before any duly constituted committee of the Senate.

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 Ms. MURKOWSKI (for herself and Mr. STEVENS):

S. 3234. A bill to amend the Internal Revenue Code of 1986 to provide a temporary income tax credit for commercial fisherman to offset high fuel costs; to the Committee on Finance.

By Mr. VITTER:

S. 3235. A bill to reduce the amount of financial assistance provided to the Government of Mexico in response to the illegal border crossings from Mexico into the United States, which serve to dissipate the political discontent with the higher unemployment rate within Mexico; to the Committee on Foreign Relations.

By Mr. McCONNELL (for himself, Mr. GRASSLEY, and Mr. KYL):

S. 3236. A bill to amend titles XVIII and XIX of the Social Security Act to extend provisions under Medicare and Medicaid programs, and for other purposes; read the first time.

ADDITIONAL COSPONSORS

S. 60

At the request of Mr. INOUYE, the name of the Senator from Maine (Ms. SNOWE) was added as a cosponsor of S. 60, a bill to amend the Public Health Service Act to provide a means for continued improvement in emergency medical services for children.

S. 678

At the request of Mrs. BOXER, the name of the Senator from Massachusetts (Mr. KERRY) was added as a cosponsor of S. 678, a bill to amend title 49, United States Code, to ensure air passengers have access to necessary services while on a grounded air carrier and are not unnecessarily held on a grounded air carrier before or after a flight, and for other purposes.

S. 935

At the request of Mr. NELSON of Florida, the name of the Senator from Oregon (Mr. WYDEN) was added as a cosponsor of S. 935, a bill to repeal the requirement for reduction of survivor annuities under the Survivor Benefit Plan by veterans' dependency and indemnity compensation, and for other purposes.

S. 937

At the request of Mrs. CLINTON, the names of the Senator from Hawaii (Mr. INOUYE) and the Senator from South Dakota (Mr. JOHNSON) were added as cosponsors of S. 937, a bill to improve support and services for individuals with autism and their families.

S. 991

At the request of Mr. DURBIN, the name of the Senator from New York (Mrs. CLINTON) 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. 1795

At the request of Ms. MURKOWSKI, her name was added as a cosponsor of S. 1795, a bill to improve access to workers' compensation programs for injured Federal employees.

S. 2504

At the request of Mr. NELSON of Florida, the name of the Senator from Minnesota (Mr. COLEMAN) was added as a cosponsor of S. 2504, a bill to amend title 36, United States Code, to grant a Federal charter to the Military Officers Association of America, and for other purposes.

S. 2507

At the request of Mrs. HUTCHISON, the name of the Senator from New Jersey

(Mr. MENENDEZ) was added as a cosponsor of S. 2507, a bill to address the digital television transition in border states.

S. 2510

At the request of Mr. ISAKSON, the name of the Senator from Kansas (Mr. ROBERTS) was added as a cosponsor 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. 2579

At the request of Mr. INOUYE, the names of the Senator from Wyoming (Mr. BARRASSO), the Senator from Montana (Mr. BAUCUS), the Senator from Delaware (Mr. CARPER), the Senator from Illinois (Mr. OBAMA), the Senator from Wisconsin (Mr. FEINGOLD), the Senator from Minnesota (Mr. COLEMAN) and the Senator from Nebraska (Mr. NELSON) were added as cosponsors of S. 2579, a bill to require the Secretary of the Treasury to mint coins in recognition and celebration of the establishment of the United States Army in 1775, to honor the American soldier of both today and yesterday, in wartime and in peace, and to commemorate the traditions, history, and heritage of the United States Army and its role in American society, from the colonial period to today.

S. 2668

At the request of Mr. ENSIGN, the name of the Senator from Oklahoma (Mr. COBURN) was added as a cosponsor of S. 2668, a bill to amend the Internal Revenue Code of 1986 to remove cell phones from listed property under section 280F.

At the request of Mr. KERRY, the name of the Senator from Hawaii (Mr. INOUYE) was added as a cosponsor of S. 2668, supra.

S. 2736

At the request of Mr. KOHL, the name of the Senator from Louisiana (Ms. LANDRIEU) was added as a cosponsor of S. 2736, a bill to amend section 202 of the Housing Act of 1959 to improve the program under such section for supportive housing for the elderly, and for other purposes.

S. 2908

At the request of Mr. BROWN, the name of the Senator from Connecticut (Mr. LIEBERMAN) was added as a cosponsor of S. 2908, a bill to amend title II of the Social Security Act to prohibit the display of Social Security account numbers on Medicare cards.

S. 2957

At the request of Mr. LIEBERMAN, the name of the Senator from Louisiana (Ms. LANDRIEU) was added as a cosponsor of S. 2957, a bill to modernize credit union net worth standards, advance credit union efforts to promote economic growth, and modify credit union regularity standards and reduce burdens, and for other purposes.

S. 3108

At the request of Mr. KERRY, the name of the Senator from Pennsylvania (Mr. CASEY) was added as a cosponsor of S. 3108, a bill to require the President to call a White House Conference on Food and Nutrition.

S. 3130

At the request of Mr. DURBIN, the name of the Senator from New Jersey (Mr. LAUTENBERG) was added as a cosponsor of S. 3130, a bill to provide energy price relief by authorizing greater resources and authority for the Commodity Futures Trading Commission, and for other purposes.

S. 3134

At the request of Mr. NELSON of Florida, the name of the Senator from Virginia (Mr. WEBB) was added as a cosponsor of S. 3134, a bill to amend the Commodity Exchange Act to require energy commodities to be traded only on regulated markets, and for other purposes.

S. 3177

At the request of Mr. KENNEDY, the name of the Senator from Maryland (Mr. CARDIN) was added as a cosponsor of S. 3177, a bill to develop a policy to address the critical needs of Iraqi refugees.

S. 3191

At the request of Mr. NELSON of Florida, the name of the Senator from Louisiana (Ms. LANDRIEU) was added as a cosponsor of S. 3191, a bill to develop and promote a comprehensive plan for a national strategy to address harmful algal blooms and hypoxia through baseline research, forecasting and monitoring, and mitigation and control while helping communities detect, control, and mitigate coastal and Great Lakes harmful algal blooms and hypoxia events.

S. 3209

At the request of Mrs. HUTCHISON, the name of the Senator from Tennessee (Mr. ALEXANDER) was added as a cosponsor of S. 3209, a bill to amend title VII of the Civil Rights Act of 1964 to clarify the filing period applicable to charges of discrimination, and for other purposes.

S. 3223

At the request of Mr. KERRY, the name of the Senator from Connecticut (Mr. LIEBERMAN) was added as a cosponsor of S. 3223, a bill to establish a small business energy emergency disaster loan program.

S.J. RES. 43

At the request of Mr. WICKER, the names of the Senator from South Carolina (Mr. DEMINT) and the Senator from South Carolina (Mr. GRAHAM) were added as cosponsors of S.J. Res. 43, a joint resolution proposing an amendment to the Constitution of the United States relating to marriage.

S. CON. RES. 87

At the request of Mr. DURBIN, the name of the Senator from Wisconsin (Mr. KOHL) was added as a cosponsor of S. Con. Res. 87, a concurrent resolution congratulating the Republic of Latvia on the 90th anniversary of its declaration of independence.

S. RES. 580

At the request of Mr. BAYH, the name of the Senator from Michigan (Ms. STABENOW) was added as a cosponsor of S. Res. 580, a resolution expressing the sense of the Senate on preventing Iran from acquiring a nuclear weapons capability.

S. RES. 607

At the request of Ms. MIKULSKI, the names of the Senator from Mississippi (Mr. COCHRAN) and the Senator from Pennsylvania (Mr. CASEY) were added as cosponsors of S. Res. 607, a resolution designating July 10, 2008, as ''National Summer Learning Day''.

S. RES. 609

At the request of Mrs. MURRAY, the name of the Senator from Washington (Ms. CANTWELL) was added as a cosponsor of S. Res. 609, a resolution recognizing the need for rapid recapitalization of the KC–135 aerial refueling fleet through re-competition of the United States Air Force's KC–X solicitation.

AMENDMENT NO. 5066

At the request of Mr. BINGAMAN, the name of the Senator from California (Mrs. FEINSTEIN) was added as a cosponsor 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 Ms. MURKOWSKI (for herself and Mr. STEVENS):

S. 3234. A bill to amend the Internal Revenue Code of 1986 to provide a temporary income tax credit for commercial fishermen to offset high fuel costs; to the Committee on Finance.

Ms. MURKOWSKI. Mr. President, I rise to introduce a bill that will help commercial fishermen in Alaska and all over the United States offset high fuel prices by providing a temporary income tax credit for excessive fuel costs. I am pleased to have Mr. STEVENS join me in introducing this important legislation.

Diesel fuel prices in Alaska and across the Nation have increased more than 50 percent over the past year. Some fishermen are reporting that they are now spending up to 70 percent of their income for fuel. This is having a devastating impact on this industry as fishermen do not have the option of passing the cost of fuel onto clients or customers, turning to alternative modes of transportation to do their jobs, or selling their product for a higher price. They can't simply increase the price of fish to offset higher fuel costs. Fish prices, in most cases, are set by the seafood processing sector and are tied to prices in the global seafood market in which Alaskan and American seafood compete.

All around the world, fishermen are responding to this crisis. They are

blockading harbors in Ireland and France, protesting at the European Union headquarters in Belgium, rioting in Italy and Spain, burning fishing boats in Thailand, and striking in Japan.

Fishermen all over the United States are staying tied to the dock, unable to make enough money from their catch to pay for the fuel. In Gloucester and Biloxi, Key West and Honolulu, Point Judith and Kodiak, fishermen simply can't afford to go fishing. And some U.S. vessels are running all the way from the Gulf of Mexico and California to Mexico to buy fuel. Even the Federal Government is cancelling fishery stock assessment surveys due to the high cost of fuel. As you can see, fishermen are getting hit from all sides right now.

When fishermen can't go fishing, they can't make their boat and permit payments. Many are simply going out of business. Fishermen are not the only ones who are concerned about the high price of fuel. The seafood processing sector also is facing higher costs for energy and many other inputs and is worried about the industry's ability to maintain a steady supply of fish. When fishermen don't leave the dock, the processors don't get their fish and a major seafood supply shortage could occur in the near future.

Some people might say that if fish stocks were healthier or fewer boats were fishing, that the industry could better deal with the increased price of fuel. But even in Alaska, where we have abundant, sustainably managed fish stocks that supply over 50 percent of the seafood in the United States, we are still suffering. The price of fuel has increased from an average of $1.80 per gallon in 2004 to $2.80 last year and diesel is now $4.50 on average.

In Alaska, we have already limited the number of vessels in most fisheries, so they are not over capitalized. We also have established many limited access privilege programs such as limited entry, individual fishing quotas, and coops, where fishermen can make choices to harvest in the most efficient and economic way. So, even though we have tried to make the fisheries much more economical, we still are being severely impacted by these high fuel prices. We are much more able to withstand these high fuel prices than regions and fisheries that have not limited the number of vessels or slowed the race for fish. But, many fisheries in Alaska, including our salmon fisheries, where over 150 million fish likely will be caught in a 2½ month season, fishermen must catch the fish while they are available. In other parts of the country, where fishermen are still racing for fish and have not limited the number of vessels participating, things must be far worse.

In order to provide temporary relief to the commercial fishermen across the country, I am introducing this legislation. If we allow the fishermen in this country to stay tied to the dock, or go out of business, we may lose a large portion of the industry. Since over 80 percent of the seafood Americans eat is imported, we simply can't afford for this to happen. We must try to assist this industry weather this storm. I believe this legislation will help us do that.

By Mr. McCONNELL (for himself, Mr. GRASSLEY, and Mr. KYL):

S. 3236. A bill to amend titles XVIII and XIX of the Social Security Act to extend provisions under Medicare and Medicaid programs, and for other purposes; read the first time.

Mr. McCONNELL. 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 placed in the RECORD, as follows:

S. 3236

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

SECTION 1. SHORT TITLE; TABLE OF CONTENTS.

(a) SHORT TITLE.—This Act may be cited as the ''Medicare and Medicaid Extension Act of 2008''.

(b) TABLE OF CONTENTS.—The table of contents of this Act is as follows:

Sec. 1. Short title; table of contents.

TITLE I—MEDICARE

Sec. 101. Extension of physician payment update.
Sec. 102. Extension of floor on Medicare work geographic adjustment under the Medicare physician fee schedule.
Sec. 103. Extension of treatment of certain physician pathology services under Medicare.
Sec. 104. Extension of exceptions process for Medicare therapy caps.
Sec. 105. Extension of payment rule for brachytherapy and therapeutic radiopharmaceuticals.
Sec. 106. Extension of accommodation of physicians ordered to active duty in the Armed Services.
Sec. 107. Delay in and reform of Medicare DMEPOS competitive acquisition program.

TITLE II—MEDICAID

Sec. 201. Extension of qualifying individual (QI) program.
Sec. 202. Extension of transitional medical assistance (TMA) and abstinence education program.
Sec. 203. Medicaid DSH extension.

TITLE III—CONTINGENCY

Sec. 301. Contingency.

TITLE I—MEDICARE

SEC. 101. EXTENSION OF PHYSICIAN PAYMENT UPDATE.

(a) IN GENERAL.—Section 1848(d)(8) of the Social Security Act (42 U.S.C. 1395w–4(d)(8)), as added by section 101 of the Medicare, Medicaid, and SCHIP Extension Act of 2007 (Public Law 110–173), is amended—

(1) in subparagraph (A), by striking ''June 30, 2008'' and inserting ''July 31, 2008''; and

(2) in subparagraph (B), by striking ''July 1, 2008'' and inserting ''August 1, 2008''.

(b) REVISION OF THE PHYSICIAN ASSISTANCE AND QUALITY INITIATIVE FUND.—Section 1848(l)(2)(A)(i) of the Social Security Act (42 U.S.C. 1395w–4(l)(2)(A)(i)), as amended by section 101(a)(2) of the Medicare, Medicaid, and SCHIP Extension Act of 2007 (Public Law 110–173) and by section 7002(c) of the Supplemental Appropriations Act, 2008, is amended—

(1) in subclause (III), by inserting '' reduced by $600,000,000'' before the period at the end; and

(2) in subclause (IV), by inserting '' increased by $220,000,000'' before the period at the end.

(c) IMPLEMENTATION.—For purposes of carrying out the provisions of, and amendments made by, this title, in addition to any amounts otherwise provided in such provisions and amendments, there are appropriated to the Centers for Medicare & Medicaid Services Program Management Account, out of any money in the Treasury not otherwise appropriated, $20,000,000.

SEC. 102. EXTENSION OF FLOOR ON MEDICARE WORK GEOGRAPHIC ADJUSTMENT UNDER THE MEDICARE PHYSICIAN FEE SCHEDULE.

(a) IN GENERAL.—Section 1848(e)(1)(E) of the Social Security Act (42 U.S.C. 1395w–4(e)(1)(E)), as amended by section 103 of the Medicare, Medicaid, and SCHIP Extension Act of 2007 (Public Law 110–173), is amended by striking ''before July 1, 2008'' and inserting ''before August 1, 2008''.

(b) TECHNICAL CORRECTION.—Section 602(1) of the Medicare Prescription Drug, Improvement, and Modernization Act of 2003 (Public Law 108–173; 117 Stat. 2301) is amended to read as follows:

''(1) in subparagraph (A), by striking 'subparagraphs (B), (C), and (E)' and inserting 'subparagraphs (B), (C), (E), and (G)'; and''.

SEC. 103. EXTENSION OF TREATMENT OF CERTAIN PHYSICIAN PATHOLOGY SERVICES UNDER MEDICARE.

Section 542(c) of the Medicare, Medicaid, and SCHIP Benefits Improvement and Protection Act of 2000 (as enacted into law by section 1(a)(6) of Public Law 106–554), as amended by section 732 of the Medicare Prescription Drug, Improvement, and Modernization Act of 2003 (42 U.S.C. 1395w–4 note), section 104 of division B of the Tax Relief and Health Care Act of 2006 (42 U.S.C. 1395w–4 note), and section 104 of the Medicare, Medicaid, and SCHIP Extension Act of 2007 (Public Law 110–173), is amended by striking ''the first 6 months of 2008'' and inserting ''the first 7 months of 2008''.

SEC. 104. EXTENSION OF EXCEPTIONS PROCESS FOR MEDICARE THERAPY CAPS.

Section 1833(g)(5) of the Social Security Act (42 U.S.C. 1395l(g)(5)), as amended by section 105 of the Medicare, Medicaid, and SCHIP Extension Act of 2007 (Public Law 110–173), is amended by striking ''June 30, 2008'' and inserting ''July 31, 2008''.

SEC. 105. EXTENSION OF PAYMENT RULE FOR BRACHYTHERAPY AND THERAPEUTIC RADIOPHARMACEUTICALS.

Section 1833(t)(16)(C) of the Social Security Act (42 U.S.C. 1395l(t)(16)(C)), as amended by section 106 of the Medicare, Medicaid, and SCHIP Extension Act of 2007 (Public Law 110–173), is amended by striking ''July 1, 2008'' each place it appears and inserting ''August 1, 2008''.

SEC. 106. EXTENSION OF ACCOMMODATION OF PHYSICIANS ORDERED TO ACTIVE DUTY IN THE ARMED SERVICES.

Section 1842(b)(6)(D)(iii) of the Social Security Act (42 U.S.C. 1395u(b)(6)(D)(iii)), as amended by section 116 of the Medicare, Medicaid, and SCHIP Extension Act of 2007 (Public Law 110–173), is amended by striking ''July 1, 2008'' and inserting ''August 1, 2008''.

SEC. 107. DELAY IN AND REFORM OF MEDICARE DMEPOS COMPETITIVE ACQUISITION PROGRAM.

(a) TEMPORARY DELAY AND REFORM.—

(1) IN GENERAL.—Section 1847(a) of the Social Security Act (42 U.S.C. 1395w–3(a)) is amended—

(A) in paragraph (1)—

(i) in subparagraph (B)(i), in the matter before subclause (I), by inserting ''consistent with subparagraph (D)'' after ''in a manner'';

(ii) in subparagraph (B)(i)(II), by striking ''80'' and ''in 2009'' and inserting ''an additional 70'' and ''in 2011'', respectively;

(iii) in subparagraph (B)(i)(III), by striking ''after 2009'' and inserting ''after 2011 (or, in the case of national mail order for items and services, after 2010)''; and

(iv) by adding at the end the following new subparagraphs:

''(D) CHANGES IN COMPETITIVE ACQUISITION PROGRAMS.—

''(i) ROUND 1 OF COMPETITIVE ACQUISITION PROGRAM.—Notwithstanding subparagraph (B)(i)(I) and in implementing the first round of the competitive acquisition programs under this section—

''(I) the contracts awarded under this section before the date of the enactment of this subparagraph are terminated, no payment shall be made under this title on or after the date of the enactment of this subparagraph based on such a contract, and, to the extent that any damages may be applicable as a result of the termination of such contracts, such damages shall be payable from the Federal Supplementary Medical Insurance Trust Fund under section 1841;

''(II) the Secretary shall conduct the competition for such round in a manner so that it occurs in 2009 with respect to the same items and services and the same areas, except as provided in subclauses (III) and (IV);

''(III) the Secretary shall exclude Puerto Rico so that such round of competition covers 9, instead of 10, of the largest metropolitan statistical areas; and

''(IV) there shall be excluded negative pressure wound therapy items and services.

Nothing in subclause (I) shall be construed to provide an independent cause of action or right to administrative or judicial review with regard to the termination provided under such subclause.

''(ii) ROUND 2 OF COMPETITIVE ACQUISITION PROGRAM.—In implementing the second round of the competitive acquisition programs under this section described in subparagraph (B)(i)(II)—

''(I) the metropolitan statistical areas to be included shall be those metropolitan statistical areas selected by the Secretary for such round as of June 1, 2008; and

''(II) the Secretary may subdivide metropolitan statistical areas with populations (based upon the most recent data from the Census Bureau) of at least 8,000,000 into separate areas for competitive acquisition purposes.

''(iii) EXCLUSION OF CERTAIN AREAS IN SUBSEQUENT ROUNDS OF COMPETITIVE ACQUISITION PROGRAMS.—In implementing subsequent rounds of the competitive acquisition programs under this section, including under subparagraph (B)(i)(III), for competitions occurring before 2015, the Secretary shall exempt from the competitive acquisition program (other than national mail order) the following:

''(I) Rural areas.

''(II) Metropolitan statistical areas not selected under round 1 or round 2 with a population of less than 250,000.

''(III) Areas with a low population density within a metropolitan statistical area that is otherwise selected, as determined for purposes of paragraph (3)(A).

''(E) VERIFICATION BY OIG.—The Inspector General of the Department of Health and Human Services shall, through post-award audit, survey, or otherwise, assess the process used by the Centers for Medicare & Medicaid Services to conduct competitive bidding and subsequent pricing determinations under this section that are the basis for pivotal bid amounts and single payment amounts for items and services in competitive bidding areas under rounds 1 and 2 of the competitive acquisition programs under this section and may continue to verify such calculations for subsequent rounds of such programs.

''(F) SUPPLIER FEEDBACK ON MISSING FINANCIAL DOCUMENTATION.—

''(i) IN GENERAL.—In the case of a bid where one or more covered documents in connection with such bid have been submitted not later than the covered document review date specified in clause (ii), the Secretary—

''(I) shall provide, by not later than 45 days (in the case of the first round of the competitive acquisition programs as described in subparagraph (B)(i)(I)) or 90 days (in the case of a subsequent round of such programs) after the covered document review date, for notice to the bidder of all such documents that are missing as of the covered document review date; and

''(II) may not reject the bid on the basis that any covered document is missing or has not been submitted on a timely basis, if all such missing documents identified in the notice provided to the bidder under subclause (I) are submitted to the Secretary not later than 10 business days after the date of such notice.

''(ii) COVERED DOCUMENT REVIEW DATE.—The covered document review date specified in this clause with respect to a competitive acquisition program is the later of—

''(I) the date that is 30 days before the final date specified by the Secretary for submission of bids under such program; or

''(II) the date that is 30 days after the first date specified by the Secretary for submission of bids under such program.

''(iii) LIMITATIONS OF PROCESS.—The process provided under this subparagraph—

''(I) applies only to the timely submission of covered documents;

''(II) does not apply to any determination as to the accuracy or completeness of covered documents submitted or whether such documents meet applicable requirements;

''(III) shall not prevent the Secretary from rejecting a bid based on any basis not described in clause (i)(II); and

''(IV) shall not be construed as permitting a bidder to change bidding amounts or to make other changes in a bid submission.

''(iv) COVERED DOCUMENT DEFINED.—In this subparagraph, the term 'covered document' means a financial, tax, or other document required to be submitted by a bidder as part of an original bid submission under a competitive acquisition program in order to meet required financial standards. Such term does not include other documents, such as the bid itself or accreditation documentation.''; and

(B) in paragraph (2)(A), by inserting before the period at the end the following: ''and excluding certain complex rehabilitative power wheelchairs recognized by the Secretary as classified within group 3 or higher (and related accessories when furnished in connection with such wheelchairs)''.

(2) BUDGET NEUTRAL OFFSET.—

(A) IN GENERAL.—Section 1834(a)(14) of such Act (42 U.S.C. 1395m(a)(14)) is amended—

(i) by striking ''and'' at the end of subparagraphs (H) and (I);

(ii) by redesignating subparagraph (J) as subparagraph (M); and

(iii) by inserting after subparagraph (I) the following new subparagraphs:

''(J) for 2009—

''(i) in the case of items and services furnished in any geographic area, if such items or services were selected for competitive acquisition in any area under the competitive acquisition program under section 1847(a)(1)(B)(i)(I) before July 1, 2008, including related accessories but only if furnished with such items and services selected for such competition and diabetic supplies but only if furnished through mail order, −9.5 percent; or

''(ii) in the case of other items and services, the percentage increase in the consumer price index for all urban consumers (U.S. urban average) for the 12-month period ending with June 2008;

''(K) for 2010, 2011, 2012, and 2013, the percentage increase in the consumer price index for all urban consumers (U.S. urban average) for the 12-month period ending with June of the previous year;

''(L) for 2014—

''(i) in the case of items and services described in subparagraph (J)(i) for which a payment adjustment has not been made under subsection (a)(1)(F)(ii) in any previous year, the percentage increase in the consumer price index for all urban consumers (U.S. urban average) for the 12-month period ending with June 2013, plus 2.0 percentage points; or

''(ii) in the case of other items and services, the percentage increase in the consumer price index for all urban consumers (U.S. urban average) for the 12-month period ending with June 2013; and''.

(B) CONFORMING TREATMENT FOR CERTAIN ITEMS AND SERVICES.—The second sentence of section 1842(s)(1) of such Act (42 U.S.C. 1395u(s)(1)) is amended by striking ''except that'' and all that follows and inserting the following: ''except that for items and services described in paragraph (2)(D)—

''(A) for 2009 section 1834(a)(14)(J)(i) shall apply under this paragraph instead of the percentage increase otherwise applicable; and

''(B) for 2014, if subparagraph (A) is applied to the items and services and there has not been a payment adjustment under paragraph (3)(B) for the items and services for any previous year, the percentage increase computed under section 1834(a)(14)(L)(i) shall apply instead of the percentage increase otherwise applicable.''.

(3) CONFORMING DELAY.—Subsections (a)(1)(F) and (h)(1)(H) of section 1834 of the Social Security Act (42 U.S.C. 1395m) are each amended by striking ''January 1, 2009'' and inserting ''January 1, 2011''.

(4) CONSIDERATIONS IN APPLICATION.—Section 1834 of such Act (42 U.S.C. 1395m) is amended—

(A) in subsection (a)(1)—

(i) in subparagraph (F), by inserting ''subject to subparagraph (G),'' before ''that are included''; and

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

''(G) USE OF INFORMATION ON COMPETITIVE BID RATES.—The Secretary shall specify by regulation the methodology to be used in applying the provisions of subparagraph (F)(ii) and subsection (h)(1)(H)(ii). In promulgating such regulation, the Secretary shall consider the costs of items and services in areas in which such provisions would be applied compared to the payment rates for such items and services in competitive acquisition areas.''; and

(B) in subsection (h)(1)(H), by inserting ''subject to subsection (a)(1)(G),'' before ''that are included''.

(b) QUALITY STANDARDS.—

(1) APPLICATION OF ACCREDITATION REQUIREMENT.—

(A) IN GENERAL.—Section 1834(a)(20) of the Social Security Act (42 U.S.C. 1395m(a)(20)) is amended—

(i) in subparagraph (E), by inserting ''including subparagraph (F),'' after ''under this paragraph,''; and

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

''(F) APPLICATION OF ACCREDITATION REQUIREMENT.—In implementing quality standards under this paragraph—

''(i) subject to clause (ii), the Secretary shall require suppliers furnishing items and services described in subparagraph (D) on or after October 1, 2009, directly or as a subcontractor for another entity, to have submitted to the Secretary evidence of accreditation by an accreditation organization designated under subparagraph (B) as meeting applicable quality standards; and

''(ii) in applying such standards and the accreditation requirement of clause (i) with respect to eligible professionals (as defined in section 1848(k)(3)(B)), and including such other persons, such as orthotists and prosthetists, as specified by the Secretary, furnishing such items and services—

''(I) such standards and accreditation requirement shall not apply to such professionals and persons unless the Secretary determines that the standards being applied are designed specifically to be applied to such professionals and persons; and

''(II) the Secretary may exempt such professionals and persons from such standards and requirement if the Secretary determines that licensing, accreditation, or other mandatory quality requirements apply to such professionals and persons with respect to the furnishing of such items and services.''.

(B) CONSTRUCTION.—Section 1834(a)(20)(F)(ii) of the Social Security Act, as added by subparagraph (A), shall not be construed as preventing the Secretary of Health and Human Services from implementing the first round of competition under section 1847 of such Act on a timely basis.

(2) DISCLOSURE OF SUBCONTRACTORS UNDER COMPETITIVE ACQUISITION PROGRAM.—Section 1847(b)(3) of such Act (42 U.S.C. 1395w–3(b)(3)) is amended by adding at the end the following new subparagraph:

''(C) DISCLOSURE OF SUBCONTRACTORS.—

''(i) INITIAL DISCLOSURE.—Not later than 10 days after the date a supplier enters into a contract with the Secretary under this section, such supplier shall disclose to the Secretary, in a form and manner specified by the Secretary, the information on—

''(I) each subcontracting relationship that such supplier has in furnishing items and services under the contract; and

''(II) whether each such subcontractor meets the requirement of section 1834(a)(20)(F)(i), if applicable to such subcontractor.

''(ii) SUBSEQUENT DISCLOSURE.—Not later than 10 days after such a supplier subsequently enters into a subcontracting relationship described in clause (i)(II), such supplier shall disclose to the Secretary, in such form and manner, the information described in subclauses (I) and (II) of clause (i).''.

(3) COMPETITIVE ACQUISITION OMBUDSMAN.—Section 1847 of such Act (42 U.S.C. 1395w–3) is amended by adding at the end the following new subsection:

''(f) COMPETITIVE ACQUISITION OMBUDSMAN.—The Secretary shall provide for a competitive acquisition ombudsman within the Centers for Medicare & Medicaid Services in order to respond to complaints and inquiries made by suppliers and individuals relating to the application of the competitive acquisition program under this section. The ombudsman may be within the office of the Medicare Beneficiary Ombudsman appointed under section 1808(c). The ombudsman shall submit to Congress an annual report on the activities under this subsection, which report shall be coordinated with the report provided under section 1808(c)(2)(C).''.

(c) CHANGE IN REPORTS AND DEADLINES.—

(1) GAO REPORT.—Section 302(b)(3) of the Medicare Prescription Drug, Improvement, and Modernization Act of 2003 (Public Law 108-173) is amended—

(A) in subparagraph (A)—

(i) by inserting ''and as amended by section 2 of the Medicare DMEPOS Competitive Acquisition Reform Act of 2008'' after ''as amended by paragraph (1)''; and

(ii) by inserting before the period at the end the following: ''and the topics specified in subparagraph (C)'';

(B) in subparagraph (B), by striking ''Not later than January 1, 2009,'' and inserting ''Not later than 1 year after the first date that payments are made under section 1847 of the Social Security Act,''; and

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

''(C) TOPICS.—The topics specified in this subparagraph, for the study under subparagraph (A) concerning the competitive acquisition program, are the following:

''(i) Beneficiary access to items and services under the program, including the impact on such access of awarding contracts to bidders that—

''(I) did not have a physical presence in an area where they received a contract; or

''(II) had no previous experience providing the product category they were contracted to provide.

''(ii) Beneficiary satisfaction with the program and cost savings to beneficiaries under the program.

''(iii) Costs to suppliers of participating in the program and recommendations about ways to reduce those costs without compromising quality standards or savings to the Medicare program.

''(iv) Impact of the program on small business suppliers.

''(v) Analysis of the impact on utilization of different items and services paid within the same Healthcare Common Procedure Coding System (HCPCS) code.

''(vi) Costs to the Centers for Medicare & Medicaid Services, including payments made to contractors, for administering the program compared with administration of a fee schedule, in comparison with the relative savings of the program.

''(vii) Impact on access, Medicare spending, and beneficiary spending of any difference in treatment for diabetic testing supplies depending on how such supplies are furnished.

''(viii) Such other topics as the Comptroller General determines to be appropriate.''.

(2) DELAY IN OTHER DEADLINES.—

(A) PROGRAM ADVISORY AND OVERSIGHT COMMITTEE.—Section 1847(c)(5) of the Social Security Act (42 U.S.C. 1395w–3(c)(5)) is amended by striking ''December 31, 2009'' and inserting ''December 31, 2011''.

(B) SECRETARIAL REPORT.—Section 1847(d) of such Act (42 U.S.C. 1395w–3(d)) is amended by striking ''July 1, 2009'' and inserting ''July 1, 2011''.

(C) IG REPORT.—Section 302(e) of the Medicare Prescription Drug, Improvement, and Modernization Act of 2003 (Public Law 108-173) is amended by striking ''July 1, 2009'' and inserting ''July 1, 2011''.

(3) EVALUATION OF CERTAIN CODE.—The Secretary of Health and Human Services shall evaluate the existing Health Care Common Procedure Coding System (HCPCS) codes for negative pressure wound therapy to ensure accurate reporting and billing for items and services under such codes. In carrying out such evaluation, the Secretary shall use an existing process, administered by the Durable Medical Equipment Medicare Administrative Contractors, for the consideration of coding changes and consider all relevant studies and information furnished pursuant to such process.

(d) OTHER PROVISIONS.—

(1) EXEMPTION FROM COMPETITIVE ACQUISITION FOR CERTAIN OFF-THE-SHELF ORTHOTICS.—Section 1847(a) of the Social Security Act (42 U.S.C. 1395w–3(a)) is amended by adding at the end the following new paragraph:

''(7) EXEMPTION FROM COMPETITIVE ACQUISITION.—The programs under this section shall not apply to the following:

''(A) CERTAIN OFF-THE-SHELF ORTHOTICS.—Items and services described in paragraph (2)(C) if furnished—

''(i) by a physician or other practitioner (as defined by the Secretary) to the physician's or practitioner's own patients as part of the physician's or practitioner's professional service; or

''(ii) by a hospital to the hospital's own patients during an admission or on the date of discharge.

''(B) CERTAIN DURABLE MEDICAL EQUIPMENT.—Those items and services described in paragraph (2)(A)—

''(i) that are furnished by a hospital to the hospital's own patients during an admission or on the date of discharge; and

''(ii) to which such programs would not apply, as specified by the Secretary, if furnished by a physician to the physician's own patients as part of the physician's professional service.''.

(2) CORRECTION IN FACE-TO-FACE EXAMINATION REQUIREMENT.—Section 1834(a)(1)(E)(ii) of such Act (42 U.S.C. 1395m(a)(1)(E)(ii)) is amended by striking ''1861(r)(1)'' and inserting ''1861(r)''.

(3) SPECIAL RULE IN CASE OF NATIONAL MAIL-ORDER COMPETITION FOR DIABETIC TESTING STRIPS.—Section 1847(b) of such Act (42 U.S.C. 1395w–3(b)) is amended—

(A) by redesignating paragraph (10) as paragraph (11); and

(B) by inserting after paragraph (9) the following new paragraph:

''(10) SPECIAL RULE IN CASE OF COMPETITION FOR DIABETIC TESTING STRIPS.—

''(A) IN GENERAL.—With respect to the competitive acquisition program for diabetic testing strips conducted after the first round of the competitive acquisition programs, if an entity does not demonstrate to the Secretary that its bid covers types of diabetic testing strip products that, in the aggregate and taking into account volume for the different products, cover 50 percent (or such higher percentage as the Secretary may specify) of all such types of products, the Secretary shall reject such bid. The volume for such types of products may be determined in accordance with such data (which may be market based data) as the Secretary recognizes.

''(B) STUDY OF TYPES OF TESTING STRIP PRODUCTS.—Before 2011, the Inspector General of the Department of Health and Human Services shall conduct a study to determine the types of diabetic testing strip products by volume that could be used to make determinations pursuant to subparagraph (A) for the first competition under the competitive acquisition program described in such subparagraph and submit to the Secretary a report on the results of the study. The Inspector General shall also conduct such a study and submit such a report before the Secretary conducts a subsequent competitive acquisition program described in subparagraph (A).''.

(4) OTHER CONFORMING AMENDMENTS.—Section 1847(b)(11) of such Act, as redesignated by paragraph (3), is amended—

(A) in subparagraph (C), by inserting ''and the identification of areas under subsection (a)(1)(D)(iii)'' after ''(a)(1)(A)'';

(B) in subparagraph (D), by inserting ''and implementation of subsection (a)(1)(D)'' after ''(a)(1)(B)'';

(C) in subparagraph (E), by striking ''or'' at the end;

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

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

''(G) the implementation of the special rule described in paragraph (10).''.

(5) FUNDING FOR IMPLEMENTATION.—In addition to funds otherwise available, for purposes of implementing the provisions of, and amendments made by, this section, other than the amendment made by subsection (c)(1) and other than section 1847(a)(1)(E) of the Social Security Act, the Secretary of Health and Human Services shall provide for the transfer from the Federal Supplementary Medical Insurance Trust Fund established under section 1841 of the Social Security Act (42 U.S.C. 1395t) to the Centers for Medicare & Medicaid Services Program Management Account of $20,000,000 for fiscal year 2008, and $25,000,000 for each of fiscal years 2009 through 2012. Amounts transferred under this paragraph for a fiscal year shall be available until expended.

(e) EFFECTIVE DATE.—The amendments made by this section shall take effect as of June 30, 2008.

TITLE II—MEDICAID

SEC. 201. EXTENSION OF QUALIFYING INDIVIDUAL (QI) PROGRAM.

(a) EXTENSION.—Section 1902(a)(10)(E)(iv) of the Social Security Act (42 U.S.C. 1396a(a)(10)(E)(iv)) is amended by striking ''June'' and inserting ''July''.

(b) EXTENDING TOTAL AMOUNT AVAILABLE FOR ALLOCATION.—Section 1933(g)(2)(I) of the Social Security Act (42 U.S.C. 1396u–3(g)(2)(I)) is amended—

(1) by striking ''June 30'' and inserting ''July 31'';

(2) by striking ''$200,000,000'' and inserting ''$250,000,000''.

SEC. 202. EXTENSION OF TRANSITIONAL MEDICAL ASSISTANCE (TMA) AND ABSTINENCE EDUCATION PROGRAM.

Section 401 of division B of the Tax Relief and Health Care Act of 2006 (Public Law 109–432, 120 Stat. 2994), as amended by section 1 of Public Law 110–48 (121 Stat. 244), section 2 of the TMA, Abstinence, Education, and QI Programs Extension Act of 2007 (Public Law 110–90, 121 Stat. 984), and section 202 of the Medicare, Medicaid, and SCHIP Extension Act of 2007 (Public Law 110–173), is amended—

(1) by striking ''June 30'' and inserting ''July 31'';

(2) by striking ''the third quarter of fiscal year 2008'' and inserting ''July 31, 2008''; and

(3) by striking ''the third quarter of fiscal year 2007'' and inserting ''July 31, 2007''.

SEC. 203. MEDICAID DSH EXTENSION.

Section 1923(f)(6) of the Social Security Act (42 U.S.C. 1396r–4(f)(6)) is amended—

(1) in subparagraph (A)(i), in the second sentence—

(A) by striking ''June 30'' and inserting ''July 31''; and

(B) by striking ''¾'' and inserting ''⅚''; and

(2) in subparagraph (B)(i)—

(A) in the first sentence, by striking ''June 30'' and inserting ''July 31''; and

(B) by striking ''$7,500,000'' and inserting ''$8,333,333''.

TITLE III—CONTINGENCY

SEC. 301. CONTINGENCY.

If a bill entitled the ''Medicare Improvements for Patients and Providers Act of 2008'' is enacted, before, on, or after the date of enactment of this Act, except for sections 101(c), the provisions of, and amendments made by, this Act are repealed and any Act amended by such amendments shall be administered as if such provisions and amendments had not been enacted.

AUTHORITY FOR COMMITTEES TO MEET

COMMITTEE ON AGRICULTURE, NUTRITION, AND FORESTRY

Mr. REID. Mr. President, I ask unanimous consent that the Committee on Agriculture, Nutrition, and Forestry be authorized to meet during the session of the Senate on Wednesday, July 9, 2008 at 12 p.m., in S–241 of the Capitol.

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

COMMITTEE ON COMMERCE, SCIENCE, AND TRANSPORTATION

Mr. REID. Mr. President, I ask unanimous consent that the Committee on Commerce, Science, and Transportation be authorized to meet during the session of the Senate on Wednesday, July 9, 2008, at 10 a.m., in room 253 of the Russell Senate Office Building.

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

COMMITTEE ON COMMERCE, SCIENCE, AND TRANSPORTATION

Mr. REID. Mr. President, I ask unanimous consent that the Committee on Commerce, Science, and Transportation be authorized to meet during the session of the Senate on Wednesday, July 9, 2008, at 2:30 p.m., in room 253 of the Russell Senate Office Building.

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

COMMITTEE ON FOREIGN RELATIONS

Mr. REID. Mr. President, I ask unanimous consent that the Committee on Foreign Relations be authorized to meet during the session of the Senate on Wednesday, July 9, 2008, at 2:30 p.m.

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

COMMITTEE ON THE JUDICIARY

Mr. REID. Mr. President, I ask unanimous consent that the Senate Committee on the Judiciary be authorized to meet during the session of the Senate, to conduct a hearing entitled ''Oversight of the U.S. Department of Justice'' on Wednesday, July 9, 2008, at 9:30 a.m., in room SD–106 of the Dirksen Senate Office Building.

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

COMMITTEE ON VETERANS' AFFAIRS

Mr. REID. Mr. President, I ask unanimous consent for the Committee on Veterans' Affairs to be authorized to meet during the session of the Senate on Wednesday, July 9, in room 418 of the Russell Senate Office Building, at 9:30 a.m.

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

COMMITTEE ON VETERANS' AFFAIRS

Mr. REID. Mr. President, I ask unanimous consent for the Committee on Veterans' Affairs to be authorized to meet during the session of the Senate on Wednesday, July 9, 2008. The Committee will meet off the Senate Floor in the Reception room.

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

PERMANENT SUBCOMMITTEE ON INVESTIGATIONS

Mr. REID. Mr. President, I ask unanimous consent that the Permanent Subcommittee on Investigations of the Committee on Homeland Security and Governmental Affairs be authorized to meet during the session of the Senate on Wednesday, July 9, 2008, at 10 a.m. to conduct a hearing entitled ''Medicare Vulnerabilities: Payments for Claims Tied to Deceased Doctors.''

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

SECURITIES INSURANCE, AND INVESTMENT SUBCOMMITTEE

Mr. REID. Mr. President, I ask unanimous consent that the Committee on Banking, Housing, and Urban Affairs be authorized to meet during the session of the Senate on Tuesday, July 9, 2008 at 2 p.m., to conduct a hearing entitled ''Reducing Risks and Improving Oversight in the OTC Credit Derivatives Market.''

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

SUBCOMMITTEE ON PUBLIC LANDS AND FORESTS

Mr. REID. Mr. President, I ask unanimous consent that the Subcommittee on Public Lands and Forests, be authorized to meet during the session of the Senate to conduct a hearing on Wednesday, July 9, 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

Mr. BAUCUS. I ask unanimous consent that the following Finance Committee staff be allowed floor privileges during the consideration of the Medicare bill: Mel Hanes, Adam Lythgoe, Ashleen Williams.

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

UNANIMOUS CONSENT AGREEMENT—EXECUTIVE CALENDAR

Mr. REID. Madam President, as in executive session, I ask unanimous consent that on Thursday, July 10, at a time to be determined by the majority leader, following consultation with the Republican leader, notwithstanding rule XXII, if applicable, the Senate proceed to executive session to consider the following nominations: Calendar Nos. 665 and 666; that there be 20 minutes of debate to run concurrently on both nominations, with the time equally divided and controlled between the chairman and the ranking member of the Armed Services Committee; that upon the use or yielding back of time, the Senate proceed to vote on confirmation of the nominations in the order listed here, with the second vote in the sequence limited to 10 minutes in duration; that upon confirmation of the nominations, the motions to reconsider be laid upon the table, en bloc, the President be immediately notified of the Senate's action, with no further motions in order, the Senate then resume legislative session, and that any time utilized during executive session count postcloture, if applicable.

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

Mr. REID. This is GEN David Petraeus and LTG Raymond Odierno.

MEASURE READ THE FIRST TIME—S. 3236

Mr. REID. Madam President, it is my understanding that there is a bill at the desk due for a first reading.

The PRESIDING OFFICER. The clerk will report the bill by title for the first time.

The assistant legislative clerk read as follows:

A bill (S. 3236) to amend titles XVIII and XIX of the Social Security Act to extend provisions under the Medicare and Medicaid programs, and for other purposes.

Mr. REID. Madam President, I ask for its second reading, and in order to place the bill on the calendar under the provisions of rule XIV, I object to my own request.

The PRESIDING OFFICER. Objection is heard. The bill will be read for the second time on the next legislative day.

ORDERS FOR THURSDAY, JULY 10, 2008

Mr. REID. Madam President, I ask unanimous consent that when the Senate completes its business today, it stand in recess until 9:30 a.m. tomorrow, Thursday, July 10; that following the prayer and pledge, the Journal of proceedings be approved to date, the time for the two leaders be reserved for their use later in the day, and the Senate resume consideration of the House message to accompany H.R. 3221, the housing reform bill; that the hour prior to the cloture vote be equally divided and controlled between the two leaders or their designees, with Senators permitted to speak for up to 10 minutes each, with Senator DODD controlling the final 10 minutes prior to the vote.

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

PROGRAM

Mr. REID. Madam President, tomorrow there will be 1 hour for debate prior to a cloture vote on the motion to disagree to the amendments of the House with respect to the housing reform bill. Therefore, Senators should expect the first vote of the day to begin as early as 10:30 a.m. There will be no morning business.

Today we were unable to reach an agreement to proceed on the Global AIDS legislation. We have tried to do that for weeks now. As a result of attempting to work something out, I was forced to file cloture to proceed to the bill, but I am hopeful we will be able to reach an agreement to consider the legislation. I certainly hope that is the case. We also hope to be able to complete the housing legislation tomorrow, but that is up in the air. We still understand there is a Republican Senator objecting to allowing us to finish this legislation.

RECESS UNTIL 9:30 A.M. TOMORROW

Mr. REID. Madam President, if there is no further business to come before the Senate, I ask unanimous consent it stand in recess under the previous order.

There being no objection, the Senate, at 6:20 p.m., recessed until Thursday, July 10, 2008, at 9:30 a.m.