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Senate

The Senate met at 9:30 a.m. and was called to order by the Honorable TOM UDALL, a Senator from the State of New Mexico.

PRAYER

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

Let us pray.

Author of life, who puts into our hearts such deep desires that we cannot be at peace until we rest in You, mercifully guide our lawmakers on the path of Your choosing. May Your Holy word be for them a lamp and a light in these challenging times. Lord, keep them mindful of the importance of being men and women of integrity, striving to please You in all of their labors. Make them people of principle who share a strong vision of a godly nation with a promising future. May their humility match Your willingness to help them and their dependence on You liberate them from anxiety about what the future holds.

We pray in Your strong Name. Amen.

PLEDGE OF ALLEGIANCE

The Honorable TOM UDALL 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. INOUYE).

The assistant legislative clerk read the following letter:

U.S. SENATE,
PRESIDENT PRO TEMPORE,
Washington, DC, May 26, 2011.

To the Senate:

Under the provisions of rule I, paragraph 3, of the Standing Rules of the Senate, I hereby appoint the Honorable TOM UDALL, a Senator from the State of New Mexico, to perform the duties of the Chair.

DANIEL K. INOUYE,
President pro tempore.

Mr. UDALL of New Mexico 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 any leader remarks, the Senate will resume consideration of the motion to concur in the House message to accompany S. 990, which is the legislative vehicle for the PATRIOT Act extension. The filing deadline for all second-degree amendments to the PATRIOT Act is at 9:40 this morning. At 10 a.m. there will be a rollcall vote on the motion to concur with respect to the PATRIOT Act.

We are confident additional rollcall votes in relation to amendments to the PATRIOT Act are possible and likely will occur during today's session.

RESERVATION OF LEADER TIME

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

SMALL BUSINESS ADDITIONAL TEMPORARY EXTENSION ACT OF 2011

The ACTING PRESIDENT pro tempore. Under the previous order, the Senate will resume consideration of the motion to concur in the House message to accompany S. 990, which the clerk will report by title.

The assistant legislative clerk read as follows:

A motion to concur in the House amendment to the bill (S. 990) to provide for an additional temporary extension of programs under the Small Business Act and the Small Business Investment Act of 1958, and for other purposes, with an amendment.

Pending:

Reid motion to concur in the amendment of the House to the bill, with Reid amendment No. 347, of a perfecting nature.

Reid amendment No. 348 (to amendment No. 347), to change the enactment date.

Reid motion to refer the message of the House on the bill to the Committee on Small Business and Entrepreneurship with instructions, Reid amendment No. 349, to change the enactment date.

Reid amendment No. 350 (to (the instructions) amendment No. 349), of a perfecting nature.

Reid amendment No. 351 (to amendment No. 350), of a perfecting nature.

The ACTING PRESIDENT pro tempore. Under the previous order, the time until 10 a.m. will be equally divided and controlled between the two leaders or their designees.

Mr. REID. Mr. President, I suggest the absence of a quorum and ask unanimous consent that the time be equally divided.

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

The clerk will call the roll.

The assistant legislative clerk proceeded to call the roll.

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

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

Mr. MCCONNELL. Mr. President, I will proceed on my leader time.

As we all know, the war on terror did not end last month when American forces shot and killed Osama bin Laden in Abbottabad.

General Clapper, the Director of National Intelligence, wrote to me yesterday to explain that this is a moment of elevated threat to our country and that the intelligence community is

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

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working to analyze the information gained at the Bin Laden compound. Al-Qaida and its associate groups remain a threat to the United States.

And our intelligence community, military and law enforcement professionals still need the tools that enable them to gather and share intelligence in this fight.

That is why all Americans should be reassured today in knowing that these dedicated men and women will continue to have those tools. I have no doubt that the 4-year PATRIOT Act extension that Members of both parties have agreed to will safeguard us from future attacks, and that everything we agreed to in this extension is necessary for this fight.

As FBI Director Bob Mueller has said, all the authorities it contains are critical. Every one requires the prior approval of an independent Federal judge. Nothing in this extension has ever been found to be unconstitutional. And most of these authorities have not even been challenged in court—ever.

The Senate Intelligence Committee has conducted aggressive oversight of the programs authorized by these expiring provisions. Over the past decade, we have seen how terrorists have proved themselves adaptable, how they have altered their tactics and methods to strike us at home. By extending this invaluable terror-fighting tool, we are staying ahead of them.

Now is not the time to surrender the tools authorized by this act, or to make them more difficult to use. It was absolutely imperative that we renew these authorities under the PATRIOT Act. They have enabled others to keep us safe for nearly a decade. Our law enforcement professionals have been able to use tools just like them in traditional criminal cases for years. We should be relieved and reassured to know they won't expire this week.

A LOOMING CRISIS

Mr. President, last June, the Chairman of the Joint Chiefs of Staff, ADM Mike Mullen, made an observation that may have surprised some people. A day after Democrats here in the Senate refused to allocate tens of billions of dollars in unemployment assistance unless the costs could be added to an already unsustainable debt—he said that, in his view, the biggest threat to our national security is our debt.

A few months earlier, the President himself identified the debt as a looming crisis. He pointed out that almost all of our long-term debt relates to the cost of Medicare and Medicaid. And he said, ''if we don't get control of that, we can't get control over our budget.'' He was right.

But the co-chair of the President's debt commission may have put it best just 6 weeks ago. Speaking about the consequences of the fiscal path we're on, Erskine Bowles said simply:

It's the most predictable crisis in history. The most predictable crisis in history—and that was a Democrat talking. And yet Democrats in the Senate don't even want to talk about it.

Yesterday, here in the Senate, Democrats rejected every single proposal we have seen on our Nation's fiscal future. They took a pass. They have chosen to ignore this crisis just like they ignored the last one.

Three years ago, as the financial crisis approached, the senior Senator from New York was holding press conferences trying to link the war in Iraq to what passed for an economic slowdown at the time. The majority leader was postponing votes that we all knew would fail so Democrats who were running for President could be here to vote on them. Now, in the face of a looming crisis we all admit is coming—they are doing the same thing.

This crisis is staring us right in the face. The Democrats themselves—from the President on down—say they see it. Yet, once again, they are so focused on the next election they refuse to do anything to upset the status quo. They are more concerned about their own jobs than preventing a economic catastrophe that could affect everybody's job. They want to wait this out—while they hammer anybody who proposes a solution. They rejected their own President's budget. They rejected three Republican budgets. And they have not even bothered to offer a budget of their own. They're just marking time, treading water.

So I think Democrats have lost the right to express concern about this crisis. Until they propose some solution of their own, they are part of the problem.

The American people didn't send us here to hide in a corner until the next election. They sent us here to act on their behalf, and this is their message: If you see a crisis coming, you better do something about it.

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

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

The clerk will call the roll.

The assistant legislative clerk proceeded to call the roll.

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

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

CLOTURE MOTION

By unanimous consent, 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 the motion to concur in the House amendment to S. 990, with amendment No. 347.

Harry Reid, Jack Reed, Carl Levin, Jeanne Shaheen, Mark R. Warner, Richard Blumenthal, Kent Conrad, Kirsten E. Gillibrand, Dianne Feinstein, Bill Nelson, John D. Rockefeller IV, Joseph I. Lieberman, Barbara A. Mikulski, Charles E. Schumer, Debbie Stabenow, Thomas R. Carper, Mark L. Pryor.

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

The question is, Is it the sense of the Senate that the debate on the motion to concur in the House amendment to S. 990 with amendment No. 347, offered by the Senator from Nevada, Mr. Reid, 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 Connecticut (Mr. BLUMENTHAL) and the Senator from New York (Mr. SCHUMER) are necessarily absent.

I further announce that, if present and voting, the Senator from New Jersey (Mr. MENENDEZ) and the Senator from New York (Mr. SCHUMER) would vote ''yea.''

Mr. KYL. The following Senator is necessarily absent: the Senator from Kansas (Mr. ROBERTS).

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

The yeas and nays resulted—yeas 79, nays 18, as follows:

[Rollcall Vote No. 81 Leg.]

YEAS—79

Akaka	Gillibrand	McConnell
Alexander	Graham	Menendez
Ayotte	Grassley	Mikulski
Barrasso	Hagan	Moran
Bennet	Harkin	Murray
Blunt	Hatch	Nelson (NE)
Boozman	Hoeven	Nelson (FL)
Boxer	Hutchison	Portman
Brown (MA)	Inhofe	Pryor
Burr	Inouye	Reed
Carper	Isakson	Reid
Casey	Johanns	Risch
Chambliss	Johnson (SD)	Rockefeller
Coats	Johnson (WI)	Rubio
Coburn	Kerry	Sessions
Cochran	Kirk	Shelby
Collins	Klobuchar	Snowe
Conrad	Kohl	Stabenow
Coons	Kyl	Thune
Corker	Landrieu	Toomey
Cornyn	Lautenberg	Vitter
Crapo	Levin	Warner
DeMint	Lieberman	Webb
Durbin	Lugar	Whitehouse
Enzi	Manchin	Wicker
Feinstein	McCain	
Franken	McCaskill	

NAYS—18

Baucus	Heller	Sanders
Begich	Leahy	Shaheen
Bingaman	Lee	Tester
Brown (OH)	Merkley	Udall (CO)
Cantwell	Murkowski	Udall (NM)
Cardin	Paul	Wyden

NOT VOTING—3

Blumenthal	Roberts	Schumer

The ACTING PRESIDENT pro tempore. On this vote, the yeas are 79, the nays are 18. Three-fifths of the Senators duly chosen and sworn having voted in the affirmative, the motion is agreed to.

Cloture having been invoked, the motion to refer the House message falls.

Mr. REID. Mr. President, I suggest the absence of a quorum.

The ACTING PRESIDENT pro tempore. The clerk will call the roll.

The legislative clerk proceeded to call the roll.

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

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

Mr. WYDEN. Mr. President, I ask unanimous consent that I be permitted to engage in a colloquy between Senators UDALL, FEINSTEIN, and MERKLEY.

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

Mr. WYDEN. Mr. President, I am going to talk for just a couple of minutes about the issue of secret law that Senator UDALL and I, as we are both members of the Intelligence Committee, have been working on for quite some time. Then I am going to yield to our friend, the distinguished chairwoman of the Intelligence Committee, Senator FEINSTEIN, for a colloquy.

What this issue is all about is this: I believe there are two PATRIOT Acts in America. The first is the text of the law itself, and the second is the government's secret interpretation of what they believe the law means.

As an example, several years ago Americans woke up to learn that the Bush administration had been secretly claiming for years that warrantless wiretapping was legal. This disclosure greatly undermined the public's trust in the Department of Justice and our national intelligence agencies, and it took Congress and the executive branch years to sort out the situation.

I believe the American people will also be extremely surprised when they learn how the PATRIOT Act is secretly being interpreted, and I believe one consequence will be an erosion of public confidence that makes it more difficult for our critically important national intelligence agencies to function effectively. As someone who served on the Intelligence Committee for 10 years, sitting right next to Senator FEINSTEIN, I don't want to see that happen.

Let me yield now to Senator UDALL. He will also have brief remarks, and any colleagues who want to speak, and then Senator FEINSTEIN will lead us in the discussion of how we will be moving forward. So I yield to Senator UDALL who has been an invaluable member on the Intelligence Committee. He and I have worked on this since the day he joined our committee, and I am so appreciative of his involvement.

Mr. UDALL of Colorado. Mr. President, I thank the Senator from Oregon for his kind words. I also wish to echo his remarks about the leadership of the chairwoman of the Intelligence Committee and her focus on keeping our country safe and our citizens protected.

I also wish to make the point that, as my colleague from Oregon, I also oppose reauthorization of the expiring provisions in the PATRIOT Act without significant reforms. I believe it is critical that the administration make public its interpretation of the PATRIOT Act so Members of Congress and the public are not kept in the dark.

Mrs. FEINSTEIN. Mr. President, I wish to thank both Senator WYDEN and Senator UDALL for their comments. We did have a meeting last night. We did discuss this thoroughly. The decision was that we would enter into this colloquy, so I will begin it, if I may.

These Senators and I, along with the junior Senator from Oregon, Mr. MERKLEY, the Senator from Colorado, Mr. MARK UDALL, and the Senator from Rhode Island, Mr. WHITEHOUSE met last night to discuss this amendment, the legal interpretation of the Foreign Intelligence Surveillance Act provisions and how these provisions are implemented.

I very much appreciate the strong views Senator WYDEN and Senator UDALL have in this area, and I believe they are raising a serious and important point as to how exactly these authorities are carried out. I believe we are also all in agreement that these are important counterterrorism authorities and have contributed to the security of our Nation.

Mr. WYDEN. Mr. President, I have enormous respect for my special friend from California, the distinguished chairwoman of the Intelligence Committee. I have literally sat next to her for more than a decade. We agree on virtually all of these issues, but this is an area where we have had a difference of opinion.

I have said I wouldn't support a long-term reauthorization of the PATRIOT Act without significant reforms, particularly in this area. I am especially troubled by the fact that the U.S. Government's official interpretation of the PATRIOT Act is secret, and I believe a significant gap has developed now between what the public thinks the law says and what the government secretly claims it says. That is why I and my colleagues from Oregon and Colorado and New Mexico have proposed an amendment that would make these legal interpretations public.

Mr. UDALL of Colorado. Mr. President, let me say once again, as does my colleague from Oregon, I oppose reauthorization of the existing provisions of the PATRIOT Act that we have been debating on the Senate floor without significant reforms. I also have to say I believe it is critical that the administration make public its interpretation of the PATRIOT Act so Members of Congress and our public are not kept in the dark. That is the important work we have in front of us, and we have a real opportunity to accomplish those goals.

Mrs. FEINSTEIN. Mr. President, if I may respond, I have agreed that these are important issues and that the Intelligence Committee, which is charged with carrying out oversight over the 16 various intelligence agencies of what is called the intelligence community, should be carried out forthrightly. I also believe the place to do it is in the Intelligence Committee itself. I have said to these distinguished Senators that it would be my intention to call together a hearing as soon as we come back from the Memorial Day break with the intelligence community agencies, the senior policymakers, and the Department of Justice to make sure the committee is comfortable with the FISA programs and to make changes if changes are needed. We will do that.

So it would be my intention to have these hearings completed before the committee considers the fiscal year 2012 intelligence authorization bill so that any amendments to FISA can be considered at that time.

The fact is, we do not usually have amendments to the intelligence authorization bill, but I believe the majority leader will do his best to secure a future commitment if such is needed for a vote on any amendment. I have not agreed to support any amendment because at this stage it is hypothetical, and we need to look very deeply into what these Senators have said and pointed out last night with specificity and get the response to it from the intelligence committee, have both sides hear it, and then make a decision that is based not only on civil liberties but also on the necessity to keep our country safe. I believe we can do that.

I am very appreciative of their agreement to enter this colloquy.

Mr. WYDEN. Mr. President, I thank the distinguished chairwoman of the Intelligence Committee for proposing this course of action for addressing the secret law issue. Obviously, colleagues would like more information on that, and they are going to be in a position to know that the Intelligence Committee is going to be examining it closely. I will just describe the next steps from there.

Senator UDALL and I have discussed this issue with Senator REID. Senator REID indicated to the chairwoman and myself and Senator UDALL that we would have an opportunity through these hearings—and, of course, any amendments to the bill would be discussed on the intelligence authorization legislation, which is a matter that obviously has to be classified—but if we were not satisfied, if we were not satisfied through that process, we would have the ability to offer an amendment such as our original one on the Senate floor.

Of course, the chairwoman would still retain full rights to oppose it, but we would make sure if this issue of secret law wasn't fixed and there wasn't an improved process to make more transparent and more open the interpretation of the law—not what are called sources and methods which are so important to protect our people—we would have an opportunity, if it wasn't corrected in the intelligence community, to come to the floor.

Senator REID has just indicated to all of us that he would focus on giving us a vote if we believed it was needed on another bill—not the intelligence authorization—before September 30. So there is a plan to actually get this fixed, and that is what is key.

At this time I yield to the Senator from Colorado.

Mr. UDALL of Colorado. Mr. President, as we begin to end this important colloquy, I wish to acknowledge the leadership of Senator WYDEN on this important matter. I also wish to acknowledge the involvement of the Senator from New Mexico, who is presiding at this moment in time, and the Senator from Oregon, Mr. MERKLEY, and the Senator from Rhode Island, Mr. WHITEHOUSE, who has been very involved in bringing this case to the attention of all of us. I wish to also thank my good friend from California, the chairwoman of the committee. She has shown a great willingness to work with everybody and to listen.

I have to say I expect that once the committee examines this issue more closely, I think many more of our colleagues will want to join us in reforming the law in this area. I think this is important. I do think we can find the right balance between protecting civil liberties and protecting the health and welfare of the American citizens.

Mr. WYDEN. Mr. President, let me just make one last comment. I also wish to express my appreciation to Senator MERKLEY, who has been an extraordinarily outspoken advocate of our civil liberties and our privacy in striking a good balance between fighting terror and protecting the rights of our people, and I have so appreciated his leadership on this issue.

Let me sum up. First, I am very grateful to our chairwoman and pleased with this agreement. The chairwoman has indicated she believes those of us who want to reform secret law have raised a serious and important issue. Those are her words. We are grateful for that because we obviously believe very strongly about it. The chairwoman has said we will hold hearings promptly to examine the secret law issue, give serious consideration to looking at reforms in the fiscal year 2012 intelligence authorization bill, and then, per our conversations with the majority leader, if Senator UDALL and I believed it had not been corrected on the intelligence authorization bill, we would have the right to offer—and certainly the chairwoman could oppose it—an amendment on the floor of the Senate on an unrelated bill. Senator REID, to his great credit, in an effort to try to resolve this and move it along, said to the three of us that he would be working to do that.

Again, our thanks to the chairwoman and all of my colleagues on the floor, including Senator MERKLEY, who is not a member of the committee and knows an incredible amount about it and certainly showed that last night in our discussions and was very helpful. I wish to yield to him.

So with the cooperation the chairwoman has shown all of us who are trying to change this and the efforts of Senator REID to make sure if we didn't work it out we could come back to the floor again, I withdraw the Wyden-Udall amendment for the time being. It ought to be clear to everybody in the Senate that we are going to continue to prosecute the cause of making more open and accountable the way the government interprets this law in making sure that the American people have the confidence that the way it is being interpreted is in line with the text of the legislation.

I withdraw at this time the Wyden-Udall amendment, and I yield the floor.

The ACTING PRESIDENT pro tempore. The Senator from Oregon.

Mr. MERKLEY. Mr. President, I am deeply appreciative of the dialogue that has just taken place. It was William Pitt in England who commented that the wind and the rain can enter my house, but the King cannot.

It captured the spirit and understanding of the balance between personal privacy, personal freedoms, and issues of the Crown regarding maintenance of security. It was this foundation that came in for our fourth amendment of our Constitution that lays out clear standards for the protection of privacy and freedoms.

So as we have wrestled with the standard set out in the PATRIOT Act, a standard that says the government may have access to records that are relevant to an investigation—now, that term is, on its face, quite broad and expansive, quite a low standard, if you will. But what happens when it is interpreted out of the sight of this Chamber, out of the sight of the American people? That is the issue my colleague has raised, and it is a very important issue.

I applaud the chair of the Intelligence Committee for laying out a process whereby we all can wrestle with this issue in an appropriate venue and have a path for amendments in the committee or possibly here on the floor of the Senate because I do think it is our constitutional responsibility to make sure the fourth amendment of the Constitution is protected, the privacy and freedoms of citizens are protected.

I say thank you to the Senator from Colorado; my senior colleague, who has led this effort from Oregon; my colleague from New Mexico, who is the Acting President pro tempore; and the chairwoman from California.

Mrs. FEINSTEIN. Mr. President, I thank my colleagues very much. I believe this concludes our colloquy.

I thank the Acting President pro tempore, and we yield the floor.

Mr. CARDIN. Mr. President, I rise to explain why I voted against the motion to invoke cloture on S. 990, the legislative vehicle for S. 1038, the reauthorization of the USA PATRIOT ACT. I opposed cloture because I believe the Senate has an obligation to consider substantive amendments to improve the PATRIOT Act.

We are all aware that at the end of this week three provisions of the PATRIOT Act will expire. The three provisions are business records, roving wiretaps, and ''lone wolf'' terrorists.

I understand there is a delicate balance we must strike here between preventing and disrupting future terrorist attacks in the United States and protecting our cherished constitutional rights and civil liberties. We must make sure that our law enforcement and intelligence professionals have the tools they need at their disposal to stop future terrorist attacks. At the same time, we must insure that our government uses our scarce resources wisely, and that it safeguards the very rights and liberties that are guaranteed by our Constitution to all Americans.

The current legislation before the Senate simply extends the existing PATRIOT Act authorities for 4 more years, until 2015, without any changes to the authorities given to the government or oversight of their use by Congress and the courts.

I think we can improve this legislation, as Congress seeks to strike the proper balance that I have mentioned. I have studied this issue closely as the former chairman of the Terrorism and Homeland Security Subcommittee of the Senate Judiciary Committee. The Judiciary Committee has held numerous hearings on the implementation of the new PATRIOT Act authorities. We have received testimony from government witnesses, including the inspector general of the Justice Department, on the improper use of some of the PATRIOT Act authorities, and recommendations to improve the PATRIOT Act.

Congress put these sunsets into this law for a reason. I have supported these sunsets for the PATRIOT Act and the FISA Amendments Act. A sunset means that a law will not just continue on autopilot without any changes. Congress uses sunsets when giving extraordinary authorities to the executive branch so that we have a check and balance on the use of this power by the government. The separation of powers also gives the courts a large role in reviewing and approving certain government investigatory and surveillance activity under the PATRIOT Act.

A sunset means that the executive branch has to come back to Congress and ask for an extension of authority. Congress then has a responsibility to look at how the law has been carried out, and make any needed improvements in the law, before again extending the authorities in the law.

Without any action by Congress, a sunset leads to the expiration of the law in question, as the authorities in the law will lapse. As a result, when sunsets are involved I have found the executive branch is more forthcoming with Congress in terms of sharing information and providing classified

briefings to Congress on how they use the authorities in question.

That is why I voted to oppose cloture. The Senate should have the ability to consider substantive amendments to the PATRIOT Act, and not simply extend the authorities as is, with no changes, for another 4 years.

And the Senate already has a package of reforms ready for consideration, after careful deliberation in committee. Earlier this week, I was pleased to cosponsor an amendment offered by the distinguished chairman of the Judiciary Committee, the Senator from Vermont, Mr. LEAHY. In the 111th Congress, I was also pleased to cosponsor similar legislation offered by Chairman LEAHY. The Senate Judiciary Committee favorably reported this legislation to the full Senate in March 2011, as S. 193, the USA PATRIOT Act Sunset Extension Act of 2011.

Broadly speaking, the Leahy amendment would increase judicial and congressional review of surveillance authorities that sweep in U.S. citizens, and would expand oversight and public reporting to ensure that Americans can monitor the use of these authorities.

The Leahy amendment requires the government to meet a higher burden of proof when seeking business records from Americans, under the so-called section 215 orders. The amendment would require the government to show that the documents sought are relevant to an authorized investigation and are linked to a foreign group or foreign power. Current law merely requires the government to show the records are relevant to an authorized investigation. Under the amendment, the government must meet an even higher burden of proof to obtain bookseller or library records.

The Leahy amendment also makes it easier for Americans to challenge the government when business records are sought. The amendment strikes the 1-year waiting period before a recipient can challenge a nondisclosure order for section 215 orders, and also strikes the conclusive presumption in favor of the government on nondisclosure of such an order.

For the first time, this Leahy amendment would also write into law a sunset provision and greater oversight of the use of national security letters, NSLs, by the government. This would therefore add a fourth sunset to the PATRIOT Act. This provision would shift the burden to the government to seek a court order for an NSL nondisclosure order, and allows the recipient of such an order to challenge it at any time.

Under the Leahy amendment, Congress will require a new series of audits to ensure protection of privacy and vigorous oversight of the new authorities given to the government. The Justice Department inspector general would conduct audits of the use of three surveillance tools: orders for tangible things; pen registers and trap and trace devices; and NSLs. The scope of such audits includes a comprehensive analysis of the effectiveness and use of the investigative authorities provided to the government, including any improper or illegal use of such authorities.

Finally, the Leahy amendment requires enhanced court review and oversight of minimization procedures, which are designed to protect the privacy of innocent and law-abiding Americans. The amendment requires increased public reporting on the use of NSL's and FISA authorities by the government, including an annual unclassified report on how FISA authorities are used and their impact on the privacy of United States persons.

We now approach the 10th anniversary of the 9/11 terrorist attacks on this Nation. The United States recently conducted a military and intelligence operation which led to the killing of the al-Qaida mastermind of the attacks, Osama bin Laden. America still faces threats to its security every day, and I thank our brave men and women in the United States military and our intelligence community for working tirelessly to keep America safe.

In my view, the Leahy amendment strikes the proper balance of giving our law enforcement and intelligence professionals the tools they need to prevent and disrupt future terrorist attacks, while simultaneously protect our civil liberties. The amendment includes important new protection for law-abiding Americans, and requires more vigorous oversight by Congress and the courts as the government uses these new powers.

Although I hope that the Leahy amendment will still be made in order, it is important that we do not allow the PATRIOT Act authorities to expire. It is important for our law enforcement and intelligence agencies to have these tools at their disposal as they seek to prevent and disrupt future terrorist attacks in the United States.

Mr. RUBIO. Mr. President, the PATRIOT Act has been an indispensable, life-saving tool for the law enforcement and intelligence communities that work tirelessly to protect our Nation from terrorist attacks. In these dangerous times, the PATRIOT Act should give a little more peace of mind to millions of Americans and give those seeking to do us harm good reason to rethink their diabolical plans.

Earlier this year, I voted to extend the PATRIOT Act. Today, I reaffirm my support for reauthorizing key PATRIOT Act provisions for an additional 4 years.

Our Nation's security has and will always be a top priority for me. As a member of the Senate's Select Committee on Intelligence, I am aware of the constant threat our Nation faces from terrorists and individuals who hate us and want to impose their radical view of the world at all costs. Any changes or limits on the PATRIOT Act would only give these extremists an opening to strike us.

While some may disagree on this issue, I simply cannot allow those tasked with protecting our people from being deprived of these vital, lawful means to help prevent an attack.

Mr. LEAHY. Mr. President, I am disappointed that we have not been able to work out an agreement that will allow consideration of my amendment to the pending USA PATRIOT Act sunset extension legislation. I think that a bipartisan majority of the Senate would have supported our improvements. We have missed an opportunity to move forward to help keep our Nation secure while also strengthening our commitment to our core constitutional principles of individual liberty and privacy.

The amendment I sought to offer represented a commonsense and reasonable package of reforms that would have improved the law, expanded civil liberties and privacy protections, and better ensured proper oversight and accountability. This amendment earned the cosponsorship of Senator PAUL and a dozen others since we began debate on Monday, including Senators CARDIN, BINGAMAN, COONS, SHAHEEN, WYDEN, FRANKEN, GILLIBRAND, HARKIN, DURBIN, MERKLEY, BOXER, and AKAKA. I thank these Senators for recognizing that the Senate should do better than merely extend the expiring provisions of the USA PATRIOT Act for another 4 to 6 years without a single improvement or reform.

Over the past 2 years, the Senate Judiciary Committee has diligently considered how to make improvements to current law. The language in our amendment was the product of more than a year and a half of extensive negotiations with Republicans and Democrats, the intelligence community, and the Department of Justice. The committee reported a bipartisan bill last Congress and another similar bill in the current Congress. The bipartisan amendment that we sought to bring to the Senate preserved the ability of the government to use the PATRIOT Act surveillance tools, while promoting transparency, accountability, and oversight. It was not everything that everyone wanted but it was a commonsense package of improvements that should have been adopted.

The Attorney General and others have repeatedly assured us that the measures to enhance oversight and accountability, such as audits and public reporting, would not sacrifice ''the operational effectiveness and flexibility needed to protect our citizens from terrorism'' or undermine ''the collection of vital foreign intelligence and counterintelligence information.'' In fact, the Attorney General has consistently said that the Senate Judiciary Committee-passed bill struck ''a good balance'' by extending PATRIOT Act authorities while adding accountability and civil liberties protections.

One of the improvements we need to make is to repair a constitutional infirmity in the current law. The so-

called Doe v. Mukasey fix is needed to address a first amendment problem with the national security letter statutes, and should not have been controversial in any way. Similarly, no one can seriously contend that periodic audits by an inspector general of past operations presented any operational concerns to law enforcement or intelligence gathering. These are vital oversight tools that everyone should have supported.

As it stands now, the extension of the PATRIOT Act provisions does not include a single improvement or reform, and includes not even a word that recognizes the importance of protecting the civil liberties and constitutional privacy rights of Americans. We could have provided the necessary tools to law enforcement and the intelligence community, but could have done so while faithfully performing our duty to protect the constitutional principles and civil liberties upon which all American rely.

Today's Washington Post included an editorial that urged the Senate to extend the PATRIOT Act authorities but also to include ''additional protections meant to ensure that these robust tools are used appropriately.'' The editorial observed that the bill ''would be that much stronger'' if it included the oversight and auditing requirements included in our amendment. That is why Senator PAUL and a dozen other Senators had sponsored the amendment. That is why Senator LEE voted for them this year in the Judiciary Committee. And I would note that Senator KYL and Senator CORNYN supported them in the last Congress.

I ask unanimous consent to have printed in the RECORD a copy of today's editorial from the Washington Post entitled, ''A Chance to Put Protections in the PATRIOT Act.''

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

[From the Washington Post, May 25, 2011]

A CHANCE TO PUT PROTECTIONS IN THE PATRIOT ACT

(By the Editorial Board)

Congress appears poised to renew important counterterrorism provisions before they are to expire at the end of the week. That much is welcome. But it is disappointing that lawmakers may extend the Patriot Act measures without additional protections meant to ensure that these robust tools are used appropriately.

The Patriot Act's lone-wolf provision allows law enforcement agents to seek court approval to surveil a non-U.S. citizen believed to be involved in terrorism but who may not have been identified as a member of a foreign group. A second measure allows the government to use roving wiretaps to keep tabs on a suspected foreign agent even if he repeatedly switches cellphone numbers or communication devices, relieving officers of the obligation of going back for court approval every time the suspect changes his means of communication. A third permits the government to obtain a court order to seize ''any tangible item'' deemed relevant to a national security investigation. All three are scheduled to sunset by midnight Thursday.

House and Senate leaders have struck a preliminary agreement for an extension to June 2015 and may vote on the matter as early as Thursday morning. This agreement was not easy to come by. Several Republican senators originally wanted permanent extensions—a proposition rebuffed by most Democrats and civil liberties groups. In the House, conservative Tea Party members, who worried about handing the federal government too much power, earlier this year bucked a move that would have kept the provisions alive until December. Congressional leaders were forced to piece together short-term approvals to keep the tools from lapsing.

The compromise four-year extension is important because it gives law enforcement agencies certainty about the tools' availability. But the bill would be that much stronger if oversight and auditing requirements originally included in the version from Sen. Patrick J. Leahy (D–Vt.) were permitted to remain. Mr. Leahy's proposal, which won bipartisan approval in the Senate Judiciary Committee, required the attorney general and the Justice Department inspector general to provide periodic reports to congressional overseers to ensure that the tools are being used responsibly. Mr. Leahy has crafted an amendment that includes these protections, but it is unlikely that the Senate leadership will allow its consideration.

At this late hour, it is most important to ensure that the provisions do not lapse, which could happen as a result of a dispute between Senate Majority Leader Harry M. Reid (D–Nev.) and Sen. Rand Paul (R–Ky.) over procedural issues. If time runs out for consideration of the Leahy amendment, Mr. Leahy should offer a stand-alone bill later to make the reporting requirements the law.

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

SMALL BUSINESS ADDITIONAL TEMPORARY EXTENSION ACT OF 2011

Mr. WYDEN. Mr. President, I ask unanimous consent that the Senate proceed to the immediate consideration of S. 1082, introduced earlier today.

The ACTING PRESIDENT pro tempore. The clerk will report the bill by title.

The legislative clerk read as follows:

A bill (S. 1082) to provide for an additional temporary extension of programs under the Small Business Act and the Small Business Investment Act of 1958, and for other purposes.

There being no objection, the Senate proceeded to consider the bill.

Mr. WYDEN. Mr. President, I ask unanimous consent that the bill be read three times and passed, the motion to reconsider be laid upon the table with no intervening action or debate, and any statements relating to the matter be printed in the RECORD.

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

The bill (S. 1082) was ordered to be engrossed for a third reading, was read the third time, and passed, as follows:

S. 1082

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled,

SECTION 1. SHORT TITLE.

This Act may be cited as the ''Small Business Additional Temporary Extension Act of 2011''.

SEC. 2. ADDITIONAL TEMPORARY EXTENSION OF AUTHORIZATION OF PROGRAMS UNDER THE SMALL BUSINESS ACT AND THE SMALL BUSINESS INVESTMENT ACT OF 1958.

(a) IN GENERAL.—Section 1 of the Act entitled ''An Act to extend temporarily certain authorities of the Small Business Administration'', approved October 10, 2006 (Public Law 109–316; 120 Stat. 1742), as most recently amended by section 1 of Public Law 112–1 (125 Stat. 3), is amended—

(1) by striking ''Any'' and inserting ''Except as provided in section 3 of the Small Business Additional Temporary Extension Act of 2011, any''; and

(2) by striking ''May 31, 2011'' each place it appears and inserting ''July 31, 2011''.

(b) EFFECTIVE DATE.—The amendments made by subsection (a) shall take effect on May 30, 2011.

SEC. 3. EXTENSION OF SBIR AND STTR TERMINATION DATES.

(a) SBIR.—Section 9(m) of the Small Business Act (15 U.S.C. 638(m)) is amended—

(1) by striking ''TERMINATION.—'' and all that follows through ''the authorization'' and inserting ''TERMINATION.—The authorization'';

(2) by striking ''2008'' and inserting ''2011''; and

(3) by striking paragraph (2).

(b) STTR.—Section 9(n)(1)(A) of the Small Business Act (15 U.S.C. 638(n)(1)(A)) is amended—

(1) by striking ''IN GENERAL.—'' and all that follows through ''with respect'' and inserting ''IN GENERAL.—With respect'';

(2) by striking ''2009'' and inserting ''2011''; and

(3) by striking clause (ii).

(c) COMMERCIALIZATION PILOT PROGRAM.—Section 9(y)(6) of the Small Business Act (15 U.S.C. 638(y)(6)) is amended by striking ''2010'' and inserting ''2011''.

SEC. 4. COMPETITIVE SELECTION PROCEDURES FOR SBIR AND STTR PROGRAMS.

Section 9 of the Small Business Act (15 U.S.C. 638) is amended by inserting after subsection (r) the following:

''(s) COMPETITIVE SELECTION PROCEDURES FOR SBIR AND STTR PROGRAMS.—All funds awarded, appropriated, or otherwise made available in accordance with subsection (f) or (n) must be awarded pursuant to competitive and merit-based selection procedures.''.

SMALL BUSINESS ADDITIONAL TEMPORARY EXTENSION ACT OF 2011—Continued

Mr. WYDEN. Mr. President, I ask unanimous consent that Senator SESSIONS be recognized to speak for up to 20 minutes for debate only.

The PRESIDING OFFICER (Mr. BROWN of Ohio). Without objection, it is so ordered.

The Senator from Alabama.

THE BUDGET

Mr. SESSIONS. Mr. President, we had an unfortunate series of votes last night, in my opinion, because it was all arranged by our leadership in the Senate to have a series of votes to do nothing. That is unfortunate because the United States of America, and the Senate are proceeding with an idea that they do not have to have a budget. In fact, the majority leader, Senator