At the request of Mr. Mcconnell, the name of the Senator from Virginia (Mr. Allen) was added as a cosponsor of S. 1597, a bill to authorize the extension of nondiscriminatory treatment (normal trade relations treatment) to the products of Armenia.

S. 1595 was added as a cosponsor of S. 1596, a bill to restore religious freedoms.

At the request of Mr. Allard, the name of the Senator from Wyoming (Mr. Enzi) was added as a cosponsor of S. 1596, a bill to restore religious freedoms.

At the request of Mr. Kerry, the name of the Senator from Indiana (Mr. Bayh) was added as a cosponsor of S. 1595, a bill to amend the Internal Revenue Code of 1986 to allow small business employers a credit against income tax with respect to employees who participate in the military reserve components and are called to active duty and with respect to replacement employees and to allow a comparable credit for active duty reservists who are self-employed individuals, and for other purposes.

S. 1622 was added as a cosponsor of S. 1595, a bill to amend the Internal Revenue Code of 1986 to allow small business employers a credit against income tax with respect to employees who participate in the military reserve components and are called to active duty and with respect to replacement employees and to allow a comparable credit for active duty reservists who are self-employed individuals, and for other purposes.

At the request of Mr. Graham of Florida, the names of the Senator from Michigan (Ms. Stabenow) and the Senator from Mississippi (Mr. Cochran) were added as cosponsors of S. 1622, a bill to amend title 10, United States Code, to exempt certain members of the Armed Forces from the requirement to pay subsistence charges while hospitalized.

S. 1642 was added as a cosponsor of S. 1642, a bill to extend the duration of the immigrant investor regional center pilot program for 5 additional years, and for other purposes.

At the request of Mr. Leahy, the name of the Senator from Kansas (Mr. Brownback) was added as a cosponsor of S. 1642, a bill to extend the duration of the immigrant investor regional center pilot program for 5 additional years, and for other purposes.

S. 1645 was added as a cosponsor of S. 1642, a bill to extend the duration of the immigrant investor regional center pilot program for 5 additional years, and for other purposes.

At the request of Mr. Craig, the names of the Senator from Louisiana (Mr. Breaux), the Senator from Montana (Mr. Burns), the Senator from Arkansas (Ms. Lincoln) and the Senator from New Mexico (Mr. Bingaman) were added as cosponsors of S. 1645, a bill to provide for the adjustment of status of certain foreign agricultural workers, to amend the Immigration and Nationality Act to reform the H-2A worker program under that Act, to provide a stable, legal agricultural workforce, to extend basic legal protections and better working conditions to more workers, and for other purposes.

S. 1633 was added as a cosponsor of S. 1593, a bill to ensure that recreational benefits are given the same priority as hurricane and storm damage relief, food, and environmental restoration benefits.

At the request of Mr. Inouye, the name of the Senator from New Jersey (Mr. Lautenberg) was added as a cosponsor of S. 1653, a bill to ensure that recreational benefits are given the same priority as hurricane and storm damage relief, food, and environmental restoration benefits.

S. CON. RES. 66 was added as a cosponsor of S. Con. Res. 66, a concurrent resolution commending the National Endowment for Democracy for its contributions to democratic development around the world on the occasion of the 20th anniversary of the establishment of the National Endowment for Democracy.

At the request of Mr. Schumer, the names of the Senator from New York (Mrs. Clinton), the Senator from South Dakota (Mr. Johnson) and the Senator from North Carolina (Mr. Edwards) were added as cosponsors of amendment No. 1790 proposed to H.R. 2765, a bill making appropriations for the government of the District of Columbia and other activities chargeable in whole or in part against the revenues of said District for the fiscal year ending September 30, 2004, and for other purposes.

At the request of Ms. Collins, her name was added as a cosponsor of amendment No. 1795 proposed to S. 1689, an original bill making emergency supplemental appropriations for Iraq and Afghanistan security and reconstruction for the fiscal year ending September 30, 2004, and for other purposes.

At the request of Mr. Carper, his name was added as a cosponsor of amendment No. 1796 proposed to S. 1689, an original bill making emergency supplemental appropriations for Iraq and Afghanistan security and reconstruction for the fiscal year ending September 30, 2004, and for other purposes.

At the request of Mr. Biden, the name of the Senator from New York (Mrs. Clinton) was added as a cosponsor of amendment No. 1796 proposed to S. 1689, supra.

At the request of Mrs. Hutchison, the name of the Senator from Kansas (Mr. Brownback) was added as a cosponsor of amendment No. 1796 proposed to S. 1689, supra.

At the request of Mr. Colemen, the names of the Senator from Tennessee (Mr. Alexander), the Senator from Georgia (Mr. Chambliss), the Senator from North Dakota (Mr. Conrad), the Senator from Idaho (Mr. Craig), the Senator from Ohio (Mr. DeWine), the Senator from New Mexico (Mr. Menendez), the Senator from Nevada (Mr. Ensign), the Senator from New Hampshire (Mr. Gregg), the Senator from Alaska (Ms. Murkowski), the Senator from Pennsylvania (Mr. Santorum), the Senator from Arizona (Mr. Sinema), the Senator from Illinois (Mr. Durbin), the Senator from Texas (Mrs. Hutchison), the Senator from West Virginia (Mr. Byrd) and the Senator from Colorado (Mr. Campbell) were added as cosponsors of amendment No. 1799 intended to be proposed to S. 1689, an original bill making emergency supplemental appropriations for Iraq and Afghanistan security and reconstruction for the fiscal year ending September 30, 2004, and for other purposes.

STATEMENTS ON INTRODUCED BILLS AND JOINT RESOLUTIONS

By Mr. Feingold:

S. 1701. A bill to delay notice of search warrants; to the Committee on the Judiciary.

Mr. Feingold. Mr. President, today I will introduce in the Senate the Reasonable Notice and Search Act. This bill addresses the provision of the USA PATRIOT Act that has caused perhaps the most concern among Members of Congress. Section 213 of the PATRIOT Act sometimes referred to as the “delayed notice search provision” or the “sneak and peek provision,” authorizes the Government in limited circumstances to conduct a search without immediately serving a search warrant on the owner or occupant of the premises that have been searched.

Prior to the PATRIOT Act, secret searches for physical evidence were performed in some jurisdictions under the authority of Court of Appeals decisions, but the Supreme Court definitively ruled whether they were constitutional. Section 213 of the Patriot Act authorized delayed notice warrants in any case in which an “adverse result” would occur if the warrant were served before the search was executed. Adverse result was defined as including: 1. Endangering the life or physical safety of an individual; 2. flight from prosecution; 3. destruction of or tampering with evidence; 4. intimidation of potential witnesses; or 5. otherwise seriously jeopardizing an investigation or unduly delaying a trial. These circumstances went beyond what court decisions had authorized before the PATRIOT Act. In addition, while some courts had required the service of the warrant within a specified period of time, the PATRIOT Act simply required that the warrant specify that it would be served within a “reasonable” period of time after the search.

It is interesting to note that this provision of the PATRIOT Act was not limited to terrorism cases. Nor was it made subject to the sunset provision that will cause most of the new surveillance provisions of the act to expire at the end of 2005 unless Congress reenacts them. So Section 213 was pretty clearly a provision that the Department of Justice wanted regardless of the terrorism threat after 9/11.

Perhaps that is why this provision has caused such controversy since it was passed. Just over 2 months ago, by a wide bipartisan margin, the House passed an amendment to the Commerce-Justice-State appropriations bill offered by Representative Otter from

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Idaho, a Republican, to stop funding for delayed notice searches authorized under section 213. The size of the vote took the Department by surprise, and it immediately set out to defend the provision aggressively. Clearly, this is a power that DOJ does not want to lose.

I raised concern about the sneak and peek provision when it was included in the Patriot Act and even considered offering an amendment at that time to strip it. I did not believe there had been adequate study and analysis of the justifications for these searches and the potential safeguards that might be included. I did not argue then, however, and I am not arguing now that there should be no delayed notice searches at all and that the provision should be repealed. I do believe, however, that it should be modified to protect against abuse. My bill will do four things to accomplish this.

First, my bill would narrow the circumstances under which a delayed notice warrant can be granted to the following: potential loss of life, flight from prosecution, or destruction or tampering with evidence. The "catch-all provision" in section 213, allowing a secret grand jury serving the warrant, would "seriously jeopardize an investigation or unduly delay a trial" is too easily susceptible to abuse.

Second, I believe that any delayed notice warrant should provide for a specific and limited time period within which notice must be given—7 days. This is consistent with some of the pre-PATRIOT Act court decisions and will help to bring this provision in closer accord with the fourth amendment to the Constitution. Under my bill, prosecutors will be permitted to seek 7-day extensions if circumstances continue to warrant that the subject not be made aware of the search. But the default should be a week, unless a court is convinced that more time should be permitted.

Third, Section 213 should be brought into the group of PATRIOT Act provisions that will sunset at the end of 2005. This will allow Congress to reexamine this provision along with the other provisions of the act, which was passed within 6 weeks of the 9/11 attacks, to determine if the balance between civil liberties and law enforcement has been correctly struck.

Finally, my bill requires a public report on the number of times that section 213 is used and the number of times that extensions are sought beyond the 7-day notice period. This information will help the public and Congress evaluate the need for this authority and decide if and when it should be retained or modified after the sunset.

These are reasonable and moderate changes to the law. They do not gut the provision. They do not make it worthless. They do not recognize the growing and legitimate concern from across the political spectrum that this provision was passed in haste and presents the potential for abuse. They also send a message that fourth amendment rights have meaning and potential violations of those rights should be minimized if at all possible. I urge my colleagues to support this bill and I ask unanimous consent that the text of the bill be printed in the RECORD.

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

SEC. 3. SUNSET ON DELAINED NOTICE AUTHORITY.

(a) PATRIOT ACT.—Section 223(a) of the USA PATRIOT Act of 2001 (Public Law 107–56, 115 Stat. 259) is amended by striking "213.".

(b) AMENDMENTS.—The amendments made by this Act shall sunset as provided in section 224 of the USA PATRIOT Act of 2001.

S. 1701

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 "Reasonable Notice and Search Act".

S. 1702

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 "Domestic Partner Health Benefits Equity Act".

SEC. 2. EXTENSION OF EXCLUSION FOR AMOUNTS RECEIVED BY AN EMPLOYEE THROUGH ACCIDENT OR BURSEMENT FOR EXPENSES FOR MEDICAL CARE.

(a) IN GENERAL.—Section 106(b) of the Internal Revenue Code of 1986 (relating to amounts expended for medical care) is amended—

(1) by striking "Except in the case" and inserting the following:

...
"(A) IN GENERAL.—In the case of taxable years beginning after December 31, 2004, and before January 1, 2011, the exclusion from wages applicable by reason of the second sentence of subparagraph (A) shall be equal to the applicable percentage of the amount which would (but for this paragraph) be the amount of such exclusion.

"(B) APPLICABLE PERCENTAGE.—For purposes of subparagraph (A), the applicable percentage shall be determined in accordance with the following table:

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<thead>
<tr>
<th>Year</th>
<th>Percentage</th>
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<tbody>
<tr>
<td>2005</td>
<td>50%</td>
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<tr>
<td>2006</td>
<td>50%</td>
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</table>

"In General.—With respect to Employed Individuals.

"(A) IN GENERAL.—In the case of taxable years beginning after December 31, 2004, and before January 1, 2011, the exclusion from wages applicable by reason of the second sentence of subparagraph (A) shall be equal to the applicable percentage of the amount which would (but for this paragraph) be the amount of such deduction.

"(B) APPLICABLE PERCENTAGE.—For purposes of subparagraph (A), the applicable percentage shall be determined in accordance with the following table:

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<td>2007</td>
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SEC. 4. EXTENSION OF DEDUCTION FOR CERTAIN AMOUNTS.

"(A) IN GENERAL.—In the case of taxable years beginning after December 31, 2004, and before January 1, 2011, the exclusion from wages applicable by reason of paragraph (1) shall be equal to the applicable percentage of the amount which would (but for this paragraph) be the amount of such exclusion.

"(B) APPLICABLE PERCENTAGE.—For purposes of subparagraph (A), the applicable percentage shall be determined in accordance with the following table:

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SEC. 5. EXTENSION OF SICK AND ACCIDENT BENEFITS PROVIDED TO MEMBERS OF A VOLUNTARY EMPLOYEES' BENEFICIARY ASSOCIATION AND THEIR DEPENDENTS.

"(A) IN GENERAL.—Section 501(c)(9) of the Internal Revenue Code of 1986 (relating to exempt organizations) is amended by adding at the end the following new sentence:

"(2) APPLICABLE PERCENTAGE OF PAYMENT OF CERTAIN SICK AND ACCIDENT BENEFITS.—Section 501 of the Internal Revenue Code of 1986 (relating to sick benefits under which members and their dependents are entitled to sick and accident benefits) is amended by redesignating subsection (p) as subsection (q) and by inserting after subsection (o) the following new subsection:

"(2) APPLICABLE PERCENTAGE OF PAYMENT OF CERTAIN SICK AND ACCIDENT BENEFITS.—Section 501 of the Internal Revenue Code of 1986 (relating to sick benefits under which members and their dependents are entitled to sick and accident benefits) is amended by redesignating subsection (p) as subsection (q) and by inserting after subsection (o) the following new subsection:

"(2) APPLICABLE PERCENTAGE OF PAYMENT OF CERTAIN SICK AND ACCIDENT BENEFITS.—Section 501 of the Internal Revenue Code of 1986 (relating to sick benefits under which members and their dependents are entitled to sick and accident benefits) is amended by redesignating subsection (p) as subsection (q) and by inserting after subsection (o) the following new subsection:

"(A) IN GENERAL.—In the case of taxable years beginning after December 31, 2004, and before January 1, 2011, the exclusion from wages applicable by reason of paragraph (1) shall be equal to the applicable percentage of the amount which would (but for this paragraph) be the amount of such exclusion.

"(B) APPLICABLE PERCENTAGE.—For purposes of subparagraph (A), the applicable percentage shall be determined in accordance with the following table:

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<td>2007</td>
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SEC. 6. AMENDMENTS TO VARIOUS DEFINITIONS.

"(A) IN GENERAL.—Subsection (o) of section 7701 of the Internal Revenue Code of 1986 (defining compensation) is amended by inserting at the end the following new sentence:

"(B) APPLICABLE PERCENTAGE OF EXCLUSION FROM COMPENSATION.—

"(B) APPLICABLE PERCENTAGE OF EXCLUSION FROM COMPENSATION.—

"(B) APPLICABLE PERCENTAGE OF EXCLUSION FROM WAGES.—

"(A) IN GENERAL.—In the case of taxable years beginning after December 31, 2004, and before January 1, 2011, the exclusion from wages applicable by reason of paragraph (1) shall be equal to the applicable percentage of the amount which would (but for this paragraph) be the amount of such exclusion.

"(B) APPLICABLE PERCENTAGE.—For purposes of subparagraph (A), the applicable percentage shall be determined in accordance with the following table:

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"For taxable years beginning after December 31, 2004, and before January 1, 2011, the exclusion from wages applicable by reason of paragraph (1) shall be equal to the applicable percentage of the amount which would (but for this paragraph) be the amount of such exclusion.

"(B) APPLICABLE PERCENTAGE.—For purposes of subparagraph (A), the applicable percentage shall be determined in accordance with the following table:

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"(A) IN GENERAL.—In the case of taxable years beginning after December 31, 2004, and before January 1, 2011, the exclusion from wages applicable by reason of paragraph (1) shall be equal to the applicable percentage of the amount which would (but for this paragraph) be the amount of such exclusion.

"(B) APPLICABLE PERCENTAGE.—For purposes of subparagraph (A), the applicable percentage shall be determined in accordance with the following table:

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"(B) APPLICABLE PERCENTAGE.—For purposes of subparagraph (A), the applicable percentage shall be determined in accordance with the following table:

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"(B) APPLICABLE PERCENTAGE.—For purposes of subparagraph (A), the applicable percentage shall be determined in accordance with the following table:

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"(B) APPLICABLE PERCENTAGE.—For purposes of subparagraph (A), the applicable percentage shall be determined in accordance with the following table:

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"(B) APPLICABLE PERCENTAGE.—For purposes of subparagraph (A), the applicable percentage shall be determined in accordance with the following table:

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"(B) APPLICABLE PERCENTAGE.—For purposes of subparagraph (A), the applicable percentage shall be determined in accordance with the following table:

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<td>50%</td>
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</table>
(A) shall be equal to the applicable percentage of the amount which would (but for this subparagraph) be the amount of such exclusion.

"(ii) For purposes of clause (i), the applicable percentage shall be determined in accordance with the following table:"

<table>
<thead>
<tr>
<th>For taxable years beginning in calendar year</th>
<th>The applicable percentage is—</th>
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<tbody>
<tr>
<td>2005, 2006, or 2007</td>
<td>25</td>
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</table>

(c) FUTA.—Section 3306 of the Internal Revenue Code of 1986 (relating to definitions) is amended by adding at the end the following new subsection:

"(v) EXCLUSION OF CERTAIN AMOUNTS FROM WAGES.—

"(1) IN GENERAL.—For purposes of applying subsection (b) with respect to expenses described in paragraph (2)(B) of such subsection, the term 'dependents' shall include any individual who is an eligible beneficiary as defined in the plan or system established by the employer.

"(2) APPLICABLE PERCENTAGE OF EXCLUSION FROM WAGES.—

"(A) IN GENERAL.—In the case of taxable years beginning after December 31, 2004, and before 2010, the exclusion from wages applicable by reason of paragraph (1) shall be equal to the applicable percentage of the amount which would (but for this paragraph) be the amount of such exclusion.

"(B) APPLICABLE PERCENTAGE.—For purposes of subparagraph (A), the applicable percentage shall be determined in accordance with the following table:"

<table>
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<tr>
<th>For taxable years beginning in calendar year</th>
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</thead>
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<td>2005, 2006, or 2007</td>
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</tr>
</tbody>
</table>

(d) EFFECTIVE DATE.—The amendments made by this section shall apply to remuneration paid after December 31, 2004.

Mr. GRAHAM of Florida. Mr. President, I am pleased to join my colleagues from Oregon, Senator SMITH, in introducing the Domestic Partner Health Benefits Equity Act, which corrects an inequity in our current tax law. Employers provide health benefits to family members who are not taxable on the value of this benefit. The tax benefit also applies to health care that covers the employee’s spouse and dependents.

In growing numbers, both public and private sector employers are providing domestic partner benefits to employees. For example, more than one-third of the Fortune 500 companies and 146 State and local governments provide such benefits. Unlike health benefits provided to their other employees, however, health care that covers a domestic partner is taxable to both the employee and the employer.

An employer’s payroll tax liability is calculated based on its employees’ taxable wages. When contributions for domestic partner benefits are included in employees’ incomes, employers pay higher payroll taxes. This provision also places an administrative burden on employers by requiring them to identify those employees utilizing their benefits for a partner rather than a spouse. Employers must then calculate the portion of their contribution that is attributable to the partner, and create and maintain a separate payroll function for these employees’ income tax withholding and payroll tax. Thus, the employer is penalized for making a sound business decision that contributes to stability in the workforce.

Senator SMITH and I have drafted legislation to allow health benefits to domestic partners to be received by employees on the same tax-free basis as “spouses.” Specifically, the bill changes the definition of “dependent” in the code—for purposes of employment-related health benefits only—to be any beneficiary allowed by the health plan.

Although the primary beneficiaries of this legislation will be employees with domestic partners, the change will also benefit employees who provide health insurance to family members who may not qualify as a “dependent” under current law. For example, the change would make it easier for an employee to include a brother, sister or parent as part of the health plan. Even if the employee does not provide more than one-half of the support for that individual, a requirement for a person being a “dependent”. I commend Senator SMITH for his leadership in this issue in our tax law. I also thank Senators CHAFEE, DYSEN, CORZINE and BOXER for joining us in this effort. I urge my colleagues to cosponsor our bill.

By Mr. SMITH:

S. 1703. A bill to amend the Internal Revenue Code of 1986 to provide a credit against income tax for expenditures for the maintenance of railroad tracks of Class II and Class III railroads; to the Committee on Finance.

Mr. SMITH. Mr. President, I rise today with Senators WYDEN, BROWNBACK, SPECTER, and burns to introduce the Local Railroad Rehabilitation and Investment Act. The bill provides a federal tax credit for short railroads that provide investments for small town America.

There are some 500 short line railroads serving large areas of the country that are no longer served by the large Class I railroads. These railroads keep our farmers and our small businesses connected to the national main line railroad system and are the only alternative to increasing truck traffic on local roads.

Many of today’s short lines were once the light density branch lines of the large Class I railroads. As Class I systems began to lose money, these branch lines received little investment and were gradually abandoned. As an alternative to abandonment, the Federal Government encouraged spinning off these lines to form new local railroad track in small town America.

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In growing numbers, both public and private sector employers are providing domestic partner benefits to employees. For example, more than one-third of the Fortune 500 companies and 146 State and local governments provide such benefits. Unlike health benefits provided to their other employees, however, health care that covers a domestic partner is taxable to both the employee and the employer.

An employer’s payroll tax liability is calculated based on its employees’ taxable wages. When contributions for domestic partner benefits are included in employees’ incomes, employers pay higher payroll taxes. This provision also places an administrative burden on employers by requiring them to identify those employees utilizing their benefits for a partner rather than a spouse. Employers must then calculate the portion of their contribution that is attributable to the partner, and create and maintain a separate payroll function for these employees’ income tax withholding and payroll tax. Thus, the employer is penalized for making a sound business decision that contributes to stability in the workforce.

Senator SMITH and I have drafted legislation to allow health benefits to domestic partners to be received by employees on the same tax-free basis as “spouses.” Specifically, the bill changes the definition of “dependent” in the code—for purposes of employment-related health benefits only—to be any beneficiary allowed by the health plan.

Although the primary beneficiaries of this legislation will be employees with domestic partners, the change will also benefit employees who provide health insurance to family members who may not qualify as a “dependent” under current law. For example, the change would make it easier for an employee to include a brother, sister or parent as part of the health plan. Even if the employee does not provide more than one-half of the support for that individual, a requirement for a person being a “dependent”. I commend Senator SMITH for his leadership in this issue in our tax law. I also thank Senators CHAFEE, DYSEN, CORZINE and BOXER for joining us in this effort. I urge my colleagues to cosponsor our bill.

By Mr. SMITH:

S. 1703. A bill to amend the Internal Revenue Code of 1986 to provide a credit against income tax for expenditures for the maintenance of railroad tracks of Class II and Class III railroads; to the Committee on Finance.

Mr. SMITH. Mr. President, I rise today with Senators WYDEN, BROWNBACK, SPECTER, and BURNS to introduce the Local Railroad Rehabilitation and Investment Act. The bill provides a federal tax credit for short railroads and addresses a critical need in small town America.

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Many of today’s short lines were once the light density branch lines of the large Class I railroads. As Class I systems began to lose money, these branch lines received little investment and were gradually abandoned. As an alternative to abandonment, the Federal Government encouraged spinning off these lines to form new local railroads that would preserve service and jobs.

Today, this local service is threatened due to the introduction of the newer, heavier 286,000-pound railcar that the Class I’s are making the new industry standard. Because of the interconnectivity of our Nation’s rail network, short lines are forced to use these heavier cars. This places an added strain on track structure and makes rehabilitation even more important and more urgent. Studies indicate that it will take $7 billion in new investment for our nation’s short lines to accommodate these heavier railcars.

My legislation is not intended to fund this entire rehabilitation. Rather, it is intended to help small railroads make the improvements required to carry traffic so they can earn the additional investment income needed to complete the $7 billion capital upgrade. Short lines operate 50,000 miles of track in 49 states, employ over 23,000 workers at an average wage of $47,000, and earn $3 billion in annual revenue. Railroading is one of the most capital-intensive industries in the country. That capital effort is also labor intensive and my legislation will result in the immediate creation of jobs needed to undertake these rehabilitation projects.

The major provisions of the Local Railroad Rehabilitation and Investment Act include:

Authorization of a federal tax credit against qualified railroad track maintenance expenditures paid or incurred by a taxpayer during taxable years 2004 to 2006. The qualified railroad track maintenance expenditures include expenditures, whether or not otherwise chargeable to capital account, for maintaining or upgrading railroad track, including roadbed, bridges and related structures, owned or leased by a Class II or Class III railroad.

The total tax credit is capped at $10,000 for every mile of railroad track owned or leased by a Class II or Class III railroad, provided that the expenditure is certified by the State as part of an essential rail upgrade. For example, a 20-mile railroad qualifies for a $200,000 credit.

And, to maximize private investment in this critical infrastructure, the bill allows railroads that are unable to fully utilize credits earned to transfer such credits to other railroads, railroad shippers, or railroader suppliers and contractors.

For rural America, the specter of losing rail access is a serious matter. As characterized in the American Association of State Highway ‘Transportation Officials’ (AASHTO) recent Freight and Commuter Bottom Line Report, short lines “often provide the first and last service miles in the door-to-door collection and distribution of railcars.” The American Association of Railroads estimates that short lines originate or terminate one out of every four carloads making their way to the national industry. Preserving short line rail service is important to the national transportation system; it is absolutely critical to the rural transportation system.

This legislation provides a modest and effective way to help the short line industry help itself.

I urge my colleagues to join me and support this important legislation.
ask unanimous consent that the text of the legislation be printed in the RECORD.

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

S. 1704

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 “Local Railroad Rehabilitation and Investment Act of 2003”.

SEC. 2. CREDIT FOR MAINTENANCE OF RAILROAD TRACK.

(a) In General.—Subpart D of part IV of subchapter A of chapter 1 of the Internal Revenue Code of 1986 (relating to business-related credits) is amended by adding at the end the following new section:

“SEC. 45G. RAILROAD TRACK MAINTENANCE CREDIT.

‘‘(a) GENERAL RULE.—For purposes of section 36, the railroad track maintenance credit determined under this section for the taxable year is the amount of qualified railroad track maintenance expenditures paid or incurred by the taxpayer during the taxable year.

‘‘(b) LIMITATION.—The credit allowed under subsection (a) shall not exceed the product of—

‘‘(1) $10,000, and

‘‘(2) the number of miles of railroad track owned or leased by the taxpayer as of the close of the taxable year.

(c) QUALIFIED RAILROAD TRACK MAINTENANCE EXPENDITURES.—For purposes of this section, the term ‘qualified railroad track maintenance expenditures’ means expenditures (whether or not otherwise chargeable to capital account) for maintaining railroad track (including roadbeds, bridges, and related track structures) owned or leased by the taxpayer of Class II or Class III railroads (as determined by the Surface Transportation Board).

(d) CONTROLLED GROUPS.—For purposes of subsection (b), rules similar to the rules of paragraph (1) of section 41(f) shall apply for purposes of this subsection.

(e) CLERICAL AMENDMENT.—The table of sections for subpart D of part IV of subchapter A of chapter 1 of the Internal Revenue Code of 1986 is amended by inserting after the item relating to section 45F the following new item:

‘‘Sec. 45G. Railroad track maintenance credit.’’

(f) EFFECTIVE DATE.—The amendments made by this section shall apply to taxable years beginning after December 31, 2003.

By Ms. COLLINS (for herself, Mr. Pryor, Mr. Coleman, and Mr. Bingaman),

S. 1704. A bill to amend the Public Health Service Act to establish a State family support grant program to end the practice of parents giving legal custody of their seriously emotionally disturbed children to State agencies for the purpose of obtaining mental health services for those children; to the committee on Health, Education, Labor, and Pensions.

Ms. COLLINS. Mr. President, I am pleased to report that I requested with Representatives Pryor, Coleman and Bingaman in introducing the ‘‘Keeping Families Together Act.’’ Among other provisions, our bill authorizes a new, competitive State grant program to support statewide systems for care for children with serious mental illness so that parents are no longer forced to give up custody of their children solely for the purpose of securing mental health treatment.

Serious mental illness afflicts millions of our Nation’s children and adolescents. As many as 20 percent of American children under the age of 17 suffer from a mental, emotional or behavioral illness. Of these, nearly half have a condition that produces a serious disability that impairs the child’s ability to function in day-to-day activities. What is even more disturbing is the fact that two-thirds of all young people who need mental health treatment are not getting it.

Behind each of these statistics is a family that is struggling to do the best it can to help a son or daughter with a serious mental illness to be just like other kids—fitting in, forming friendships, to do well in school, and to get along with their siblings and other family members. These children are almost always involved with more than one social service agency, including the mental health, special education, child welfare, and juvenile justice systems. Yet no one agency, at either the State or the Federal level, is clearly responsible or accountable for helping these children.

Recent news reports in more than 30 States have highlighted the difficulties that parents of children with serious mental illness have in getting the coordinated mental health services that their children need. My interest in this issue was triggered by a compelling series of stories by Barbara Walsh in the Portland Press Herald last summer which detailed the obstacles that many Maine families have faced in getting care for their children.

Too many families in Maine and elsewhere have been forced to make wrenching decisions when they have been advised that the only way to get the care that their children so desperately need is to relinquish custody and place them in either the child welfare or juvenile justice system.

Yet neither system is intended to serve children with serious mental illness. Child welfare systems are designed to protect children who have been abused or neglected. Juvenile justice systems are designed to rehabilitate children who have committed criminal or delinquent acts and to prevent such acts from occurring. While neither of these systems is equipped to care for a child with a serious mental illness, in far too many cases, there is nowhere else for the family to turn.

Earlier this year, the General Accounting Office (GAO) completed a report that I requested with Representatives Peter Stark and Patrick Kennedy titled ‘‘Child Welfare and Juvenile Justice: Federal Agencies Could Play a Stronger Role in Helping States Reduce the Number of Children Placed Solely to Obtain Mental Health Services.’’

The GAO surveyed child welfare directors in all States and the District of Columbia, as well as juvenile justice officials in the 33 counties with the largest number of young people in their juvenile justice systems. According to the GAO survey, in 2001, parents placed more than 12,000 children into the child welfare or juvenile justice systems so that these children could receive mental health services.
Moreover, the GAO estimate is likely just the tip of the iceberg, since 32 States—including the five States with the largest populations of children—did not provide the GAO with any data. There have been other studies indicating that the relinquishment problem is pervasive. In 1999, the National Alliance for the Mentally Ill released a survey which found that 23 percent—or one in four of the parents surveyed—had been told by public officials that they needed to relinquish custody of their children to get care, and that one in five of these families had done so.

While some States have passed laws to limit or prohibit custody relinquishment, simply banning the practice is not a solution, since it can leave mentally ill children and their families without services and care. Custody relinquishment is merely a symptom of the much larger problem, which is the lack of available, affordable and appropriate mental health services and support systems for these children and their families.

In July, I chaired a series of hearings in the Committee on Governmental Affairs to examine the difficult challenges families of children with mental illnesses face. We heard compelling testimony from families who told the Committee about their personal struggles to get mental health services for their severely ill children. The mothers who testified told us that they were advised that the only way to get the intensive care and services that their children needed was to relinquish custody and place them in the child welfare system. This is a wrenching decision that no family should be forced to make. No parent should have to give up custody of his or her child just to get the services that the child needs.

The legislation that we are introducing today was developed in response to concerns raised by both the GAO report and in the Governmental Affairs Committee hearings.

First, the legislation authorizes $55 million for competitive grants to States that would be payable over six years to create an infrastructure to support and sustain statewide systems of care to serve children who are in custody or at risk of entering custody of the State for the purpose of receiving mental health services. These grants are intended to help States ensure that these children are served more efficiently and effectively, while keeping them at home with their families.

States would use funds from these Family Support Grants to foster inter-agency cooperation and cross-system financing among the various State agencies with responsibilities for serving children with mental health needs. The funds would also support the purchase and delivery of a comprehensive array of community-based mental health and family support services for children who are in custody, or at risk of entering into the custody of the State for the purpose of receiving mental health services. This will allow States, which already dedicate significant dollars to serving children in state custody, to use those resources more efficiently by delivering care to children while allowing them to remain with their families.

In response to a recommendation made by the GAO report, the Keeping Families Together Act will also establish a Federal interagency task force to examine mental health issues in the child welfare and juvenile justice systems and the policies and practices in promoting access by children and youth to mental health services.

And finally, the legislation will remove a current statutory barrier that prevents more States from using the Medicaid home and community-based services waiver to serve children with serious mental health conditions. The Medicaid home and community-based services waiver is a promising way for States to reduce the incidence of custody relinquishment and address the underlying lack of mental health services for children. While a number of States have requested these waivers to serve children with developmental disabilities, to date very few have done so for children with serious mental health conditions. That is because, under current law, States can only offer home- and community-based services under these waivers as an alternative to care in hospitals, nursing facilities, or intermediate care facilities for the mentally retarded. Our legislation will correct this omission and provide parity to children with mental illness by including inpatient psychiatric hospitals and residential treatment facilities on the list of institutions for which alternative care through the Medicaid home- and community-based services waivers may be available.

The legislation we are introducing today will help to reduce the barriers to care for children who suffer from mental illness and will assist States in eliminating the practice of parents relinquishing custody of their children to State agencies solely for the purpose of securing mental health services.

Our legislation has been endorsed by a number of mental health and children’s groups including the National Alliance for the Mentally Ill, the Federation of Families for Children’s Mental Health, the National Child Welfare League, the Bazelon Center, the Children’s Defense Fund, and the National Alliance for the Mentally Ill. I urge all of my colleagues to join us as cosponsors.

By Mr. KENNEDY (for himself, Mr. JEFFORDS, Mr. CHAFFEE, Mr. LIEBERMAN, Mr. AKAKA, Mr. BAUCUS, Mr. BAYH, Mr. BIDEN, Mr. BINGAMAN, Mrs. BOXER, Mr. BREAX, Ms. CANTWELL, Mr. CARPER, Mrs. CLINTON, Ms. COLLINS, Mr. CORZINE, Mr. DASCHLE, Mr. DAYTON, Mr. DODD, Mr. DORGAN, Mr. DURBIN, Mr. EDWARDS, Mr. FEINGOLD, Mrs. FEINSTEIN, Mr. GRAHAM of Florida, Mr. HARKIN, Mr. INOUYE, Mr. KERRY, Mr. KOHL, Ms. LANDRIEU, Mr. LAUTENBERG, Mr. LEAHY, Mr. LEVIN, Ms. MIKULSKI, Mrs. MURRAY, Mr. NELSON of Florida, Mr. REED, Mr. REID, Mr. SARBANES, Mr. SCHUMER, Mr. SMITH, Mr. SPECTER, Ms. STABENOW, and Mr. WYDEN):

S. 1705. A bill to prohibit employment discrimination on the basis of sexual orientation; to the Committee on Health, Education, Labor, and Pensions.

Mr. KENNEDY, Mr. President, it's a privilege to join my colleagues in introducing the Employment Non-Discrimination Act of 2003.

Civil rights is the unfinished business of our nation. Title VII of the Civil Rights Act of 1964 gives all Americans—no matter their race, ethnic background, gender, or religion—the opportunity to obtain and keep a job. The Employment Non-Discrimination Act is an essential additional step in preventing job discrimination.

The act is straightforward and limited. It prohibits discrimination based on sexual orientation in making decisions about hiring, firing, promotion, and compensation. It makes clear that there is no right to preferential treatment, and that quotas are prohibited. It does not apply to employers with less than 15 employees. It does not apply to the armed forces, religious organizations, or such volunteer positions as troop leaders in the Boy Scouts or Girl Scouts.

In fact, this fundamental additional protection for America's workforce is long overdue. Too many hardworking Americans are being judged on their sexual orientation rather than their ability and qualifications.

Consider the example of Kendall Hamilton in Oklahoma City. After working at Red Lobster for several years and receiving excellent reviews, he applied for promotion at the urging of the general manager, who knew he was gay. His application was rejected after a co-worker revealed his sexual orientation to the upper management team, and the promotion was given instead to another employee who had been on the job for only 9 months—and whom Mr. Hamilton had trained. He was told that his sexual orientation was not compatible with Red Lobster's "high family values," and that being gay had destroyed any chance of becoming a manager. As a result, Hamilton left the company.

Consider the example of Steve Morris, a firefighter in Oregon. His co-workers saw him only as a co-worker protesting an anti-gay initiative, and incorrectly assumed he was gay himself. He began to lose workplace responsibilities and was the victim of harassment, including hate mail. After a long administrative process, the trumped-up charges were removed from his record, and he was transferred to another fire station.
The overwhelming majority of Americans believe that this kind of discrimination is wrong. According to a 2003 Gallup study, 88 percent of Americans believe that gays and lesbians should have equal job opportunities. The Employment Non-Discrimination Act is strongly supported by labor unions and a broad religious coalition. They know that America will not reach its full potential or realize its promise of equal justice and equal opportunity for all until we end all forms of discrimination.

Over 60 percent of Fortune 500 companies have implemented non-discrimination policies that include sexual orientation. Our legislation has been endorsed by leading corporations such as AT&T, BP, Cisco Systems, Eastman Kodak, FleetBoston, General Mills, Hewlett-Packard, IBM, JP Morgan Chase & Co., Microsoft, Nike, Oracle, Shell Oil, and Verizon.

Small businesses support our legislation as well. At a hearing in 2001, Lucy Billingsly, a Republican small business owner in Dallas, said, "A uniform Federal law banning sexual orientation discrimination will give businesses the right focus. By paying attention to the quality of work being done and not to factors that have nothing to do with job performance, all of America's businesses will perform better."

Despite broad-based support in the business community and Congress's history of enacting anti-discrimination legislation, some argue that the solution to the problem of job discrimination is to enact a federal law. They argue that the solution will give businesses the right focus. By paying attention to the quality of work being done and not to factors that have nothing to do with job performance, all of America's businesses will perform better.

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This bill provides for equality and fairness—that and no more. It says only what we already have said for women, for people of color and for others; that you are entitled to have your ability to earn a living depend only on your ability to do the job and nothing else.

This bill would bring our nation one large step closer to realizing the vision that Thomas Jefferson so eloquently expressed in 1776 when he wrote, "that all of us have a right to life, liberty and the pursuit of happiness."

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I urge my colleagues to join me in supporting this important legislation.

By Ms. STABENOW:

S. 1707. A bill to amend title 39, United States Code, to provide for free mailing privileges for personal correspondence and certain parcels sent from within the United States to members of the Armed Forces serving on active duty abroad who are engaged in military operations involving armed conflict against a hostile foreign force, or who are engaged in military operations involving armed conflict against a hostile foreign force.

This bill is a companion bill to Representative LUCAS'S H.R. 2705, a bill with 31 bipartisan cosponsors in the House of Representatives.

Our troops overseas can send mail and packages to their loved ones at no cost. They should have the same privilege to receive mail.

Two constituents of mine, both mothers of servicemen in Iraq, brought this inequity to my attention. Renee Walton from Lincoln Park, MI, mother of twins Jeremy and Joshua who are currently serving in the Marine Corps, writes, 'I believe this is something all the troops' families will benefit from and most especially the soldier who is waiting patiently for a package from home.'

Suzann Sareini, a Dearborn resident, says, "As a mother of one of the brave individuals in our armed forces fighting for this country, I believe this act exhibits a tremendous amount of patriotic gratitude for the sacrifices being made by members of the military and their families. This Congressional action would be invaluable in its contribution to the morale of our soldiers waiting patiently for packages from back home.'

I wholeheartedly agree with these two Michigan moms.

Currently 2,500 Michigan Guard and Reserves are on active duty, many of whom are serving in Iraq or Afghanistan or fighting the war against terrorism around the globe. That means our service members must pay postage to do so...

I ask unanimous consent that the text of the bill be printed in the RECORD.

October 2, 2003
CONGRESSIONAL RECORD — SENATE
S12383
There being no objection, the bill was ordered to be printed in the Record, as follows:

S. 1707
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 “Providing Our Support to Troops Act of 2003”.

SECTION 2. FREE MAILING PRIVILEGS.
(a) In General.—Chapter 34 of title 39, United States Code, is amended by adding at the end the following:

“§ 3407. Free postage for personal correspondence and certain parcels mailed to members of the Armed Forces of the United States”.

“(a) In General.—The matter described in subsection (b) (other than matter described in subsection (c)) may be mailed free of postage, if—

(1) such matter is sent from within an area served by a United States post office;

(2) such matter is addressed to an individual who is a member of the Armed Forces of the United States as a result of active duty, as defined in section 3401(a)(1)(B), or who is a member of the armed forces, authorized to use postal services at Armed Forces installations, holds a position or performs one or more functions in support of military operations, as designated by the military theater commander; and

(3)(A) such matter is addressed to the individual referred to in paragraph (2) at an Armed Forces post office established in an overseas area with respect to which a designation under section 3401(a)(1)(A) is in effect; or

(B) in the case of an individual who is hospitalized at a facility under the jurisdiction of the Armed Forces of the United States as a result of disease or injury described in section 3401(a)(1)(B), such matter is addressed to such individual at an Armed Forces post office determined under subsection (c);

(b) Mail Matter Described.—The free mailing privilege provided by subsection (a) is extended to—

(1) letter mail or sound- or video-recorded communications having the character of personal correspondence; and

(2) parcels not exceeding 10 pounds in weight and 60 inches in length and girth combined.

(c) Limitation.—The free mailing privilege provided by subsection (a) does not extend to mail matter that contains any advertising.

(d) Rate of Postage.—Any matter which is mailed under this section shall be mailed at the equivalent rate of postage which assures that the mail will be sent by the most economical means practicable.

(e) Consolidation.—All matter mailed under this section shall bear, in the upper right-hand corner of the address area, the words “Free Matter for Members of the Armed Forces of the United States”, or words to that effect specified by the Postal Service.

(f) Regulations.—This section shall be administered under such conditions, and under such regulations, as the Postal Service and the Secretary of Defense jointly may prescribe.”.

(b) Amendment to Prevent Duplicitous Funding.—Section 3401(e) of title 39, United States Code, is amended by striking “office,” and inserting “office or (3) for which appropriations are authorized to be appropriated to the Postal Service under section 2401(d).”.

(c) Technical and Conforming Amendments.

(i) Annual Budget.—Section 2009 of title 39, United States Code, is amended in the next to last sentence by striking “(b) and (c)” and inserting “(b), (c), and (d)”. (ii) Comprehensive Plan References.—Sections 2803(a) and 2804(a) of such title 39 are amended by striking “2804(g)” and inserting “2801(f)”. (c) Criminal Analysis.—The analysis for chapter 34 of title 39, United States Code, is amended by adding at the end the following: “3407. Free postage for personal correspondence; and certain parcels mailed to Members of the Armed Forces of the United States.”.

By Mr. CRAIG (for himself, Mr. DURBIN, Mr. CRAPO, Mr. FEINGOLD, Mr. SUNUNU, Mr. WYDEN, and Mr. BINGAMAN):

S. 1709. A bill to amend the USA PATRIOT Act to place reasonable limitations on the use of surveillance and the issuance of search warrants, and for other purposes; to the Committee on the Judiciary.

Mr. CRAIG. Mr. President, I rise today on behalf of myself and Senators DURBIN, CRAPO, FEINGOLD, SUNUNU, and BINGAMAN, to introduce the Security and Freedom Ensured Act of 2003, which we call the SAFE Act.

This bill is aimed at addressing some specific problems that have been raised about the USA PATRIOT Act. We believe this is a measured, reasonable, and appropriate response that would ensure the liberties of law-abiding individuals are protected in our Nation’s fight against terrorism, without in any way impeding that fight.

Let me say at the outset that I voted in favor of the USA PATRIOT Act. I believed then, and still do, that it was the right thing to do in the wake of the attacks on our Nation on September 11, 2001. I would also like to express my gratitude to those brave men and women who put their lives on the line every day to protect the American people from further attacks by would-be terrorists and criminals. The Department of Justice and Department of Homeland Security should be commended for the dramatic progress they are making in detecting, pursuing, and stopping those who pose a threat to our Nation and our people.

Even so, the USA PATRIOT Act is not a perfect law, and it is no criticism of those who are so ably waging the war against terrorism to suggest that it may be in order to amend some aspects of that law.

The SAFE Act is intended to do just that: make some commonsense changes that help to safeguard our freedoms, without sacrificing our security. It focuses on areas that have been particularly controversial: delayed notice warrants, which are also referred to as “sneak and peek” warrants; wiretaps that do not require specificity as to either person or place; the impact of the new law on libraries; and nationwide search warrants. Our bill would amend, not eliminate these tools or repeal the USA PATRIOT Act in these areas.

I spend a lot of time on the ground in my home State of Idaho, and regardless of the pride Idahoans have in the success of the war on terrorism, many of them continue to raise concerns about the tools being used in that war. Admittedly, a lot of misinformation has been spread about the USA PATRIOT Act, and I applaud the Administration for working to correct that misinformation. However, not all of the concerns about the law are unfounded or misguided, and I strongly believe they deserve a proper hearing in Congress. Furthermore, one has only to look at the censpars of the SAFE Act to see that these concerns are not unique to Idahoans—they are shared by a wide regional and political spectrum.

This morning, the Chairman and Ranking Member of the Senate Judiciary Committee announced a series of hearings on how our anti-terrorism laws are working. As a member of that committee, I look forward to the opportunity of exploring these issues in detail and finding solutions for any problems we discover, possibly including the SAFE Act. The changes this bill makes are not numerous or sweeping, but they are significant. I hope my colleagues will agree and will support the legislation we are introducing today.

I ask unanimous consent that the text of the bill be printed in the Record.

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

S. 1709
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 “Security and Freedom Ensured Act of 2003” or the “SAFE Act”.

SEC. 2. LIMITATION ON ROVING WIRETAPS UNDER FOREIGN INTELLIGENCE SURVEILLANCE ACT OF 1978.
Section 105(c) of the Foreign Intelligence Surveillance Act of 1978 (50 U.S.C. 1805(c)) is amended—

(i) in paragraph (1), by striking subparagraphs (A) and (B) and inserting the following:—

“(A) the identity of the target of electronic surveillance, if known; or

(ii) if the identity of the target is not known, a description of the target and the nature and location of the facilities and places at which the electronic surveillance will be directed;
"(b)(1) the nature and location of each of the facilities or places at which the electronic surveillance will be directed, if known; and
"(2) in paragraph (2)—
"(A) by redesignating subparagraphs (B) through (D) as subparagraphs (C) through (E), respectively; and
"(B) by inserting after subparagraph (A), the following:
"(B) in cases where the facility or place at which the surveillance will be directed is not known at the time the order is issued, that the surveillance is conducted only when the presence of the target at a particular facility or place is ascertained by the person conducting the surveillance;"

SEC. 3. LIMITATION ON AUTHORITY TO DELAY NOTICE OF SEARCH WARRANTS.

(a) IN GENERAL.—Section 3106a of title 18, United States Code, is amended—
"(1) by striking in subsection (b)—
"(A) in paragraph (1), by striking “may have an adverse result (as defined in section 2705)” and inserting "will";—
"(A) endanger the life or physical safety of an individual;—
"(B) result in flight from prosecution; or—
"(C) result in the destruction of, or tampering with, the evidence sought under the warrant;" and
"(B) in paragraph (3), by striking “within a reasonable period” and all that follows and inserting “not later than 7 days after the execution of the warrant, which period may be extended by the court for an additional period of not more than 7 days each time the court finds reasonable cause to believe, pursuant to a request by the Attorney General, the Deputy Attorney General, or an Associate Attorney General, that notice of the execution of the warrant will—
"(A) endanger the life or physical safety of an individual;—
"(B) result in flight from prosecution; or—
"(C) result in the destruction of, or tampering with, the evidence sought under the warrant;" and
"(2) by adding at the end the following:
"(c) REPORTS.—
"(1) IN GENERAL.—Every 6 months, the Attorney General shall submit a report to Congress, with respect to warrants under subsection (b), the requests made by the Department of Justice for delays of notice and extensions of delays of notice during the preceding 6-month period.
"(2) CONTENTS.—Each report submitted under paragraph (1) shall include, for the preceding 6-month period—
"(A) the number of requests for delays of notice with respect to warrants under subsection (b), categorized as granted, denied, or pending;
"(B) for each request for delayed notice that was granted, the number of requests for extensions of the delay of notice, categorized as granted, denied, or pending;
"(3) PUBLIC AVAILABILITY.—The Attorney General shall make the report submitted under paragraph (1) available to the public.
"(b) SUNRISE PROVISIONS.—
"(1) IN GENERAL.—Subsections (a) and (c) of section 3106a of title 18, United States Code, shall cease to have effect on December 31, 2005.

SEC. 4. PRIVACY PROTECTIONS FOR LIBRARY, BOOKSELLER, AND OTHER PERSONAL RECORDS UNDER FOREIGN INTELLIGENCE SURVEILLANCE ACT OF 1978.

(a) APPLICATIONS FOR ORDERS.—Section 501(b)(2) of the Foreign Intelligence Surveillance Act of 1978 (50 U.S.C. 1801(b)(2)) is amended—
"(1) by striking "shall specify that the records and information" and inserting "shall specify that;"—
"(2) by striking the period at the end and inserting the following: "; and
"(3) by adding at the end the following:
"(B) the application meets the other requirements of this section;—
"(c) OVERSIGHT OF REQUESTS FOR PRODUCTION OR DISSEMINATION OF RECORDS.—Section 502 of the Foreign Intelligence Surveillance Act of 1978 (50 U.S.C. 1802) is amended by striking "finds that" and all that follows and inserting "finds that—
"(a) there are specific and articulable facts giving reason to believe that the person to whom the records pertain is a foreign power or an agent of a foreign power; and
"(B) the application meets the other requirements of this section;—
"(d) OVERSIGHT OF REQUESTS FOR PRODUCTION OR DISSEMINATION OF RECORDS.—Section 502 of the Foreign Intelligence Surveillance Act of 1978 (50 U.S.C. 1802) is amended by striking "finds that" and all that follows and inserting "finds that—
"(a) there are specific and articulable facts giving reason to believe that the person to whom the records pertain is a foreign power or an agent of a foreign power; and
"(B) the application meets the other requirements of this section;—
"(e) OVERSIGHT OF REQUESTS FOR PRODUCTION OR DISSEMINATION OF RECORDS.—Section 502 of the Foreign Intelligence Surveillance Act of 1978 (50 U.S.C. 1802) is amended by striking "finds that" and all that follows and inserting "finds that—
"(a) there are specific and articulable facts giving reason to believe that the person to whom the records pertain is a foreign power or an agent of a foreign power; and
"(B) the application meets the other requirements of this section;—

SEC. 5. PRIVACY PROTECTIONS FOR COMPUTER USERS AT LIBRARIES UNDER NATIONAL SECURITY AUTHORITY.

Section 2709 of title 18, United States Code, is amended—
"(1) by striking subsection (a)—
"(A) by striking "A wire" and inserting the following:

Mr. DURBIN. Mr. President, the PATRIOT Act, the counterterrorism bill that the Bush administration pushed through Congress after the September 11 terrorist attacks, has been the focus of much controversy in recent months. I voted for the PATRIOT Act, as did the vast majority of my colleagues in the Congress. I believed then, and I still believe, that the PATRIOT Act made many reasonable and necessary changes in the law.

For example, the PATRIOT Act tripled the number of Federal agents at the Northern border, an area that had been greatly understaffed. It allocated $100 million to upgrade technology for monitoring the Northern border. It expedited the hiring of FBI translators, who were desperately needed to translate intelligence after 9/11.

Most importantly, the PATRIOT Act updated information technology and enhanced information sharing between Federal agencies, especially the FBI and the CIA. As we learned after 9/11, the failure of these agencies to communicate with each other may have prevented law enforcement from uncovering the 9/11 plot before that terrible day.

However, the PATRIOT Act contains several controversial provisions that I and many of my colleagues believe went too far. The Bush administration placed Congress in a very difficult situation by insisting on including these provisions in the bill. We were able to amend or sunset some of the most controversial provisions. However, many remained in the final version. As a result, the PATRIOT Act makes it much easier for the FBI to monitor the innocent activities of American citizens with minimal or no judicial oversight. For example,

The FBI can now obtain records on the books you check out of the library or the videos you rent, simply by certifying that the records are sought for a terrorism or intelligence investigation, a very low standard. A court no longer has authority to question the FBI’s certification. The FBI no longer must show that the documents relate to a suspected terrorist or spy.

The FBI can conduct a “sneak and peek” search of your home, not notifying you of the search or the fact that your property is under a “reasonable period,” a term which is not defined in the PATRIOT Act. A court is now authorized to issue a “sneak and peek” warrant where a court finds “reasonable cause” that providing immediate notice of the warrant would have an “adverse result,” a very broad standard. The use of “sneak and peek” warrants is not limited to terrorism cases.

The FBI can obtain a “John Doe” roving wiretap, which does not specify the target of the wiretap or the place to be wiretapped. This increases the likelihood that the conversations of innocent people wholly unrelated to an investigation will be intercepted.

Many in Congress did not want to deny law enforcement some of the reasonable reforms contained in the PATRIOT Act that they needed to combat terrorism. So, we reluctantly decided to support the administration’s version of the bill, but not until we secured a commitment that these reforms be responsive to Congressional oversight and consult extensively with us before seeking any further changes in the law.
Unfortunately, the Justice Department has reneged on their commitment to Congress, frustrating oversight on the PATRIOT Act at every turn. Attorney General Ashcroft only rarely appears on Capitol Hill. In fact, he has only testified before the Senate Judiciary Committee, of which I am a member, once this year. He appeared, along with two other administration officials, for just half a day. The Justice Department regularly fails to answer congressional inquiries, either arguing that requested information is classified, or simply not responding at all.

At the same time, the administration’s allies in Congress have argued that the PATRIOT Act’s sunset list, if ever should be repealed before we have had an opportunity to review their effectiveness. Earlier this year, we learned that the administration had secretly drafted another sweeping counterterrorism bill, “PATRIOT Act II,” without consulting with Congress. This bill would grant the Justice Department even broader authority, such as the right to strip Americans of their citizenship.

That proposal generated widespread opposition, but, unchastened, the administration went on the offensive again recently. On the anniversary of the 9/11 attacks, President Bush proposed new laws that would give the Justice Department the authority to issue so-called administrative subpoenas, without judicial review, create 15 new federal death penalty crimes, and mandate pretrial detention for defendants accused of a laundry list of offenses, many of them unrelated to terrorism. These proposals continue the Administration’s pattern of seeking to limit judicial oversight and grant broad, unchecked authority to law enforcement.

While they are pushing radical changes in the law, the Bush administration has failed to take commonsense steps to prevent terrorism, like developing fully accountable information systems and creating a consolidated terrorist watch list. Most of the information systems now within the Department of Homeland Security’s jurisdiction were acquired and developed independently within the former agencies in a parochial “stovepipe” fashion, and may be incompatible with other DHS systems. The Bush administration indicated that an initial inventory of these systems would be completed by this summer, and that inventory is still not completed.

This April, the GAO concluded that nine different agencies still develop and maintain a dozen terrorist watch lists, including overlapping and different criteria and inconsistent procedures and policies on information sharing. The law creating the Department of Homeland Security requires the Department to consolidate watch lists. The Bush Administration promised that the lists would be consolidated by the first day of Homeland Security’s operations. Seven months later, the lists are still not consolidated.

The Bush administration has devoted too many resources to counterterrorism measures that threaten our civil liberties and do little to improve our security. For example, John Ashcroft’s Justice Department has launched a number of high-profile initiatives to monitor immigrants, especially Arabs and Muslims, for heightened scrutiny. These efforts squander precious law enforcement resources and alienate communities whose cooperation we desperately need. They represent one of the most disturbing examples of community policing, which reject the use of racial and ethnic profiles and focus on building trust and respect by working cooperatively with community members.

The Justice Department’s own Inspector General has found that the Justice Department has not adequately distinguished between terrorism suspects and other immigration detainees. The IG found that the Justice Department detained 762 aliens as a result of the September 11 investigation, exactly zero of whom were charged with terrorist-related offenses. No one is suggesting that the Department should never use immigration charges to detain a suspected terrorist, but the broad brush of terrorism should not be applied to large numbers of every out-of-status immigrants who happen to be Arab or Muslim.

Many of us in Congress have raised concerns with the Justice Department about implementing the PATRIOT Act and other civil liberties issues, and, rather than respond to legitimate concerns, they have gone on the offensive. In testimony before the Judiciary Committee, Attorney General John Ashcroft warned his critics:

To those who scare peace-loving people with phantoms of lost liberty; my message is this: Your tactics only aid terrorists—for they erode our national unity and diminish the resolve or resources of America’s enemies, and pause to America’s friends. They encourage people of good will to remain silent in the face of evil.

It is unacceptable to dismiss those who raise legitimate concerns about civil liberties as terrorist sympathizers.

For the American people, the PATRIOT Act has become a potent symbol of the Justice Department’s poor record on civil liberties. In fact, three states, Alaska, Hawaii, and Vermont, and over 180 cities and counties across the country, including Chicago in my home State of Illinois, have passed resolutions opposing provisions of the PATRIOT Act.

Almost 2 years after its passage, I believe that it is time to revisit the debate about the PATRIOT Act. Let me be clear: I do not believe that we should repeal the PATRIOT Act. However, I do believe that we should amend several of its most troubling provisions. It is not necessary to alter basic privacy laws to bring all the necessary tools to combat terrorism, but we must also be careful to protect the civil liberties of Americans. I believe we can be both safe and free.

Today, I, Senator Craig, and several of our Republican and Democratic colleagues in the Senate introduced the Security and Freedom Ensured Act of 2003, or SAFE Act. The SAFE Act is a carefully-tailored bipartisan bill that would amend the most problematic provisions of the PATRIOT Act, those that grant broad powers to the FBI to monitor Americans with inadequate judicial oversight. The bill would impose reasonable limits on the FBI’s authority without impeding their ability to investigate and prevent terrorism. It would not amend pre-PATRIOT Act law in anyway. The SAFE Act is supported by a broad coalition from across the political spectrum, including the American Civil Liberties Union and the American Conservative Union.

The SAFE Act would:

- Reauthorize the pre-PATRIOT Act standard for seizing business records. In order to obtain a warrant the FBI would have to demonstrate that it has reason to believe that the person to whom the records relate is a suspected terrorist or spy. The SAFE Act retains the expansion of the business record provision to include all business records, including library records, rather than just the four types of records—hotel, car rental, storage facility and common carrier—covered before the PATRIOT Act.
-Authorize a court to issue a delayed notification warrant where notice of the warrant would endanger the life or physical safety of an individual, result in flight from prosecution, or result in the destruction of or tampering with the evidence sought under the warrant. It would require notification of a covert search within seven days, rather than an undefined “reasonable period.” It would authorize unlimited additional 7-day delays if the court found that notice would continue to endanger the life or physical safety of an individual, result in flight from prosecution, or result in the destruction of or tampering with the evidence sought under the warrant.

Limit “John Doe” roving wiretaps by requiring the warrant to identify either the target of the wiretap or the place to be wiretapped. To protect innocent people from Government surveillance, it would also require that surveillance be conducted only when the suspect is present at the place to be wiretapped.

Sunset several of the PATRIOT Act’s most controversial surveillance provisions on December 31, 2005. Many of PATRIOT’s surveillance provisions already sunset on December 31, 2005. The SAFE Act would simply give Congress an opportunity to assess the effectiveness of several additional controversial provisions before deciding whether to reauthorize them.

Under the SAFE Act, the FBI would still have broad authority to combat terrorism. For example, consider the following hypotheticals:
The FBI would like to search the travel records of a suspected terrorist to help determine if he attended a meeting with other extremists. The FBI has reason to believe the records are related to suspected terrorists, so the SAFE Act would authorize the issuance of a subpoena.

The FBI suspects that an individual affiliated with an extremist organization is planning a terrorist attack. The FBI would like to search the suspect’s computer drive to learn more about the plot without tipping off the suspect and his co-conspirators. The SAFE Act would permit the issuance of a “sneak and peak” warrant, and permit the FBI to delay notice of the warrant for as long as it would continue to endanger the life or physical safety of an individual, result in flight from prosecution, or result in the destruction of or tampering with the evidence sought under the warrant.

At the same time, the SAFE Act would protect innocent Americans from unchecked Government surveillance. For example:

The FBI is investigating suspected members of a terrorist cell and would like to subpoena the records of a library and a bookstore that they frequent. Currently, the FBI could subpoena all of the records of the library and bookstore, including the records of countless innocent Americans, by certifying they are sought for a terrorism investigation, the exceedingly low standard created by the PATRIOT Act. The SAFE Act would permit the FBI to obtain records related to the suspected terrorists, but not records related to innocent Americans who are not suspected terrorists.

The FBI is tracking a suspected terrorist who is using local phone lines at local restaurants to do business. The PATRIOT Act would permit the issuance of a roving wiretap that would apply to any phone the suspect uses. Under the SAFE Act, the FBI could monitor the conversations not just of the suspect, but of innocent patrons of these restaurants. The SAFE Act would also permit the issuance of a roving wiretap that would apply to any phone the suspect uses, but would only permit the FBI to gather intelligence when they ascertain that the suspect is using a phone.

The Justice Department has argued that amending the PATRIOT Act would handcuff law enforcement and make it very difficult to combat terrorism. Nothing could be further from the truth. It is possible to combat terrorism and protect our liberties. The SAFE Act demonstrates that. I urge my colleagues to support it.

SUBMITTED RESOLUTIONS

SENATE RESOLUTION 238—AUTHORIZING REGULATIONS RELATING TO THE USE OF OFFICIAL EQUIPMENT

Mr. LOTT (for himself and Mr. DODD) submitted the following resolution, which was considered and agreed to:

Resolved, That (a) the Committee on Rules and Administration of the Senate may issue regulations to authorize a Senator or officer of the Senate to issue official equipment for purposes incidental to the conduct of their official duties.

(b) Any use under subsection (a) shall be subject to such conditions as set forth in the regulations.

SENATE CONCURRENT RESOLUTION 71—PROVIDING FOR A CONDITIONAL SUSPENSION OF THE JUDICIAL COMMISSION OR RECESS OF THE SENATE

Mr. FRIST submitted the following concurrent resolution, which was considered and agreed to:

Resolved by the Senate (the House of Representatives concurring), that when the Senate reassembles at the close of business on Friday, October 3, 2003, on a motion offered pursuant to this concurrent resolution by its Minority Leader or his designee, it stand recessed or adjourned until Tuesday, October 14, 2003, at a time to be specified by the Majority Leader or his designee in the motion received until noon on the second day after Members are notified to reassemble pursuant to section 2 of this concurrent resolution, whichever occurs first.

Sec. 2. The President pro tempore of the Senate after consultation with the Minority Leader of the Senate, shall notify the Members of the Senate to reassemble whenever, in his opinion, the public interest shall warrant it.

AMENDMENTS SUBMITTED AND PROPOSED

SA 1800. Mr. SPEKTOR submitted an amendment intended to be proposed by him to the bill S. 1689, making appropriations for the Departments of Commerce, Justice, and State, the Judiciary, and related agencies for the fiscal year ending September 30, 2004, and for other purposes; which was ordered to lie on the table.

SA 1801. Mr. SMITH submitted an amendment intended to be proposed by him to the bill S. 1585, making appropriations for the Departments of Commerce, Justice, and State, the Judiciary, and related agencies for the fiscal year ending September 30, 2004, and for other purposes; which was ordered to lie on the table.

SA 1802. Mr. COLEMAN (for himself, Mr. DAYTON, Mr. STEVENS, Mr. DORGAN, Mr. KENNEDY, Mr. JOHNSON, Mr. CORZINE, Ms. COLLINS, Mr. GRAHAM of South Carolina, Mr. CONRAD, Mr. SUNUNU, Mr. ALLEN, Mr. BYRD, Mr. PEYOR, Mrs. BOXER, Mr. BUNNING, Mr. LEAHY, and Mr. NELSON of Florida) proposed an amendment to the bill S. 1689, making emergency supplemental appropriations for Iraq and Afghanistan security and reconstruction for the fiscal year ending September 30, 2004, and for other purposes; which was ordered to lie on the table.

SA 1803. Mr. LEAHY proposed an amendment intended to be proposed by him to the bill S. 1585, making appropriations for the Departments of Commerce, Justice, and State, the Judiciary, and related agencies for the fiscal year ending September 30, 2004, and for other purposes; which was ordered to lie on the table.

SA 1804. Mr. DAYTON submitted an amendment intended to be proposed by him to the bill S. 1689, super; which was ordered to lie on the table.

SA 1805. Mr. GRAHAM of South Carolina submitted an amendment intended to be proposed by him to the bill S. 1689, super; which was ordered to lie on the table.

SA 1806. Mr. GRAHAM of South Carolina submitted an amendment intended to be proposed by him to the bill S. 1689, super; which was ordered to lie on the table.

SA 1807. Mr. CHAFFEE (for himself and Mr. LEAHY) submitted an amendment intended to be proposed by him to the bill S. 1689, super; which was ordered to lie on the table.

TEXT OF AMENDMENTS

SA 1800. Mr. SPEKTOR submitted an amendment intended to be proposed by him to the bill S. 1689, making appropriations for the Departments of Commerce, Justice, and State, the Judiciary, and related agencies for the fiscal year ending September 30, 2004, and for other purposes; which was ordered to lie on the table.

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