THE PATRIOT ACT

Mrs. FEINSTEIN. Mr. President, I rise today as a 12-year member of the Senate Judicary Committee and a 5-year member of the Senate Intelligence Committee. I do so indeed with a very heavy heart. I have had, until now, great confidence in America’s intelligence activities. I have assumed my responsibility to the Congress of the United States to wiretap phones or to open electronic surveillance, defined therein, concerning intelligence activities other than covert actions, which is within their custody or control, and which is requested by either of the congressional intelligence committees or the Attorney General to carry out its authorized responsibilities.

At that time, we had this discussion about just the chairman and the vice chairman receiving certain information, and this act was amended, and section (b) was added to the National Security Act, called “form and contents of certain reports.” It was to clarify what the form and content of the reporting to the committee would be. And the wording is as follows:

Any report relating to a significant anticipated intelligence activity or a significant intelligence failure that is submitted to the congressional intelligence committees shall include a concise statement of any fact pertinent to such report, and an explanation of the significance of the intelligence activity or intelligence failure covered by such report, and then section (c) was added, “standards and procedures for expeditious reports,” that those standards and procedures would hereby be established.

What has happened is that it has become increasingly used just to notify a very few people. There are 535 Members of the House of Representatives of the United States. If the President of the United States is not going to follow the law and he simply alerts eight Members, that doesn’t mean he doesn’t violate a law. I repeat, that doesn’t mean he doesn’t violate a law. FISA is the exclusive law in this area, unless there is something I missed, and please, someone, if there is, bring it to my attention.

Section 105(f) allows for emergency applications where time is of the essence. But even in these cases, a judge makes the final decision as to whether someone inside the United States of America, a citizen or a non-citizen, is going to have their communications wiretapped or intercepted. The New York Times reports that in 2004, over 1,700 warrants for this kind of wiretapping activity were approved by the FISA Court. The fact of the matter is, FISA can grant emergency applications for wiretaps within hours and even minutes, if necessary.

In times of war, FISA section 111 states this:

Notwithstanding any other law, the President, through the Attorney General, may authorize electronic surveillance without a court order under this title to acquire foreign intelligence information for a period not to exceed 72 hours following a declaration of war by the Congress. I would argue the resolution authorizing use of force was not a declaration of war. I read it this morning carefully. It does not authorize the President of the United States to do anything other than use force. It doesn’t say he can wiretap people in the United States of America. And apparently, with some change, but apparently this activity has been going on, unbeknownst to most of us in this body and in the other body now since 2002.

The newspaper, the New York Times, states that the President unilaterally decided to ignore this law and ordered his subordinates to monitor communications outside of this legal authority.

In the absence of authority under FISA, Americans up till this point have been confident—and we have assured them—that such surveillance was prohibited.

This is made explicit in chapter 119 of title 18 of the criminal code which makes it a crime for anyone without authorization to intentionally intercept any wire, oral, or electronic communication.

As a member of the Senate Judiciary and Intelligence Committees, I have been repeatedly assured by this administration that their efforts to combat terrorism were being conducted within the law, specifically within the parameters of the Foreign Intelligence Surveillance Act which, as I have just read, makes no exception other than 15 days following a declaration of war.

We have changed aspects of that law at the request of the administration in the USA PATRIOT Act to allow for a more aggressive but still lawful defense against terror. So there have been amendments. But if this article is accurate, it calls into question the integrity and credibility of our Nation’s commitment to the rule of law.

I refreshed myself this morning on the fourth amendment to the Bill of Rights of the Constitution of the United States. Here is what it says:

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

Clearly an intercept, a wiretap, is a search. It is a common interpretation. A wiretap is a search. You are looking for something. It is a search. It falls under the fourth amendment to allow for a more aggressive but still lawful defense against terror.

Again, the New York Times states that a small number of Senators, as I said, were informed of this decision by the President. That doesn’t diminish the import of this issue, and that certainly doesn’t mean the action was within the law or legal.

What is concerning me, as a member of the Intelligence Committee, is if eight people, rather than 535 people, can know there is going to be an illegal act and they were told this under an investigation, according to therefore, their lips are sealed—does that make the act any less culpable? I don’t think so.
The resolution passed after September 11 gave the President specific authority to use force, including powers to prevent further terrorist acts in the form of force. I would like to read it. I read Public Law 107-40, 107th Congress.

Sec. 1. Short title.

This joint resolution may be cited as the “Authorization for Use of Military Force”.

Sec. 2. Authorization for Use of United States Armed Forces.

(A) In General.—That the President is authorized to use all necessary and appropriate force against those nations, organizations, or persons he determines planned, authorized, committed, or aided the terrorist attacks that occurred on September 11, 2001, or harbored such organizations or persons, in order to prevent any future acts of international terrorism against the United States by such nations, organizations, or persons.

Then it goes on to say:

Consistent with section 8(a)(1) of the War Powers Resolution, the Congress declares that this section is intended to constitute specific statutory authorization within the meaning of section 5(b) of the War Powers Resolution.

This is use of force. It is not use of wiretapping or electronic surveillance of American citizens or those with foreign citizenship within the confines of the United States. That is the jurisdiction of the FISA Court. There is a procedure, and it is timely.

As a matter of fact, we got into this rather seriously in the Judiciary Committee. At the time we wrote the PATRIOT Act, I offered an amendment to change what is called “the wall” between domestic intelligence-gathering agencies and foreign intelligence-gathering agencies from a “primary purpose” for the collection of foreign intelligence to a “significant purpose.” We had a major discussion in the committee, as is the American way. We were making public policy. We discussed for what primary purpose meant. We discussed in legal terms what significant purpose meant.

So this was a conscious loosening of a standard in the FISA law to permit the communication of one element of Government with the other and transfer foreign intelligence information from one element of the Government to the other.

That is the way this is done, by law. We are a government of law. The Congress was never asked to give the President unilateral authority that appears to have been exercised.

Mr. BYRD. Right.

Mrs. FEINSTEIN. I was heartened when Senator SPECTER also said that he believed that the New York Times report is true—and the fact that they have withheld the story for a year leads me to believe it is true, and I have heard no denunciation of it by the administration—then it is inappropriate. It is a violation of the law. How can any Member of this body go out, and say that under the PATRIOT Act we protect the rights of American citizens if, in fact, the President is not going to be bound by the law, which is the FISA court?

And there are no exceptions to the FISA court.

So Senator SPECTER, this morning, as the chairman of the Judiciary Committee, could I hold hearings on this matter the first thing next year. I truly believe this is the most significant thing I have heard in my 12 years. I am so proud of this Government because we are governed by the rule of law. I believe that a few countries can really claim that. I am so proud that nobody can be picked up in the middle of the night and thrown into jail without due process, and that they have due process. That is what makes us different. That is why our Government is so special, and that is why this Constitution is so special. That is why the fourth amendment was added to the Bill of Rights—to state clearly that searches and seizures must be carried out under the parameter of law, not on the direction of a President unilaterally.

So I believe the door has been opened to a very major investigation and set of circumstances. I think people who know me in this body know I am not led to exaggerate, but I cannot stress what happened when I read this story. And everything I hold dear about this country, everything I pledge allegiance to in that flag, is this kind of protection as provided by the Constitution of the United States and the laws we labor to discuss, argue, debate, enact, then pressure the other body to pass, and then urge the President to sign. That is our process.

If the President wanted this authority, he should have come to the Intelligence Committee for an amendment to FISA, and he did not. The fact that this has been going on since 2002—it is now the end of 2005. Maybe 8 people in these 2 bodies in some way, shape, or form may have known something about it, but the rest of us on the Intelligence Committees did not.

That is simply unacceptable.

I yield the floor.

The PRESIDING OFFICER. The Senator from Minnesota.

Mr. DAYTON. Mr. President, I thank the Senator from California for her remarks and associate myself with them. I commend her for taking on this vital issue affecting all Americans.

I ask unanimous consent that the previous order be modified to permit Senator BYRD to precede me in speaking order.

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

The Senator from West Virginia.

Mr. BYRD. Mr. President, I thank the very distinguished Senator from Minnesota for his kindness and his courtesy in yielding to me. I want to say there is one thing I am sorry about with respect to the Senator from Minnesota. He and I have a high degree of precision some time ago. I wish he had not made it, and I begged him to retract on it and say he would not do it. He says he is not going to run again. I am sorry about that. He is one of the immortal 23 Senators who voted against that resolution that the Senator from California is talking about. I voted against it. I have been in the Senate for 47 years and I think that the Senate is best served when most proud because in voting that way, I stood for this, the Constitution of the United States. That Constitution does not give any President the power to declare war. It says Congress shall have the power to declare war. I voted against the best vote I have cast in 47 years in this Senate, and I am proud that the Senator from Minnesota can carry that tribute with him to the grave. I thank him and congratulate him. Again, I thank him for yielding to me.

Mr. President, I believe in America. Let me say that again. I believe in America. I believe in the dream of the Founders and Framers of our inspiring Constitution. I believe in the spirit that drove President Abraham Lincoln to risk all to preserve the Union. I believe in what President Kennedy challenged America to be—America, the great experiment of democracy.

Where the strong are also just and that weak can feel safe and promise of America stands as a beacon, praise God, of freedom and a protector of liberty which lights and energizes the people around the world. Today, sadly, that beacon is dimmed. This administration’s practice of rendition is an affront, an affront to the principles of freedom, the very opposite of principles we claim we are trying to
transplant to Iraq and to other rogue nations.

The administration claims that rendition is a valuable weapon in the war on terror. But what is the value of having America’s CIA sit as judge and jury while deciding just who might be a threat to our national security? Such determinations receive no review by a court of law—none. The CIA simply swings into action, abducts a person from any foreign country and flies them off to who knows where, with no judicial review of guilt or innocence. A person can be held in secret prisons in unnamed countries or even shipped off to yet another country to face torture at the hands of the secret police of brutal governments.

Is that what we want? Is this the America that our Founders conceived? Is this the America that Nathan Hale died for, when he said I only regret that I have but one life to lose for my country? Is this the America that he died for? Is this the America that our Founders conceived? Is this the America of which millions of people dreamed? Is this, I ask the Senate, the beacon of freedom inspiring other nations to follow?

The United States should state clearly and without question that we will not torture prisoners and that we will abide by the treaties that we signed, because to fail to do so is to lose the very humanity, the morality that makes America different, that makes America the hope for individual liberty around the world.

The disgraceful, degrading, and damaging practice of rendition should cease immediately. Is this what Patrick Henry was talking about—give me liberty or give me death? It is not about who they are. It is not about who we are. Those are the words of my colleague Senator JOHN MCCAIN, bless his heart. Senator McCain is a senior member of the Senate Armed Services Committee. He is a former prisoner of war. He knows what it is all about. And he is a former prisoner of war. He is a former prisoner of war. He is a former prisoner of war. He is a former prisoner of war. He is a former prisoner of war. He is a former prisoner of war. He is a former prisoner of war. He is a former prisoner of war.

Yesterday, I believe it was, we heard reports that the military has spied on Americans simply because they exercised their right to peaceably assemble and to speak their minds. What disgrace. What a shame. Today we hear, yes, we hear today that the military is tapping phone lines in our own country without the consent of a judge. Can you believe this? A little target so that it may never be challenged in a court of law is not what the Framers had in mind.

Paranola must not be allowed to chip away at our civil liberties. Don’t let it happen. The United States of America must not adopt the thuggish tactics of our enemies—no. We must not trash the fourth amendment because the Senate is being stampeded at the end of a congressional line. Government fishing expeditions with search warrants written by FBI agents is not what the Framers had in mind. It is not what Benjamin Franklin had in mind. It is not what Morris had in mind. It is not what Jefferson had in mind. Spying on ordinary, unsuspecting citizens—not with that in mind. Without their knowledge? No. That is not what the Framers had in mind. Handing the Government unilateral authority to keep all evidence secret from a target so that it may never be challenged in a court of law is not what the Framers had in mind.

So many have died protecting those freedoms. And we owe it to those brave men and women to deliberate meaningfully and to ultimately protect those freedoms that Americans cherish so deeply. The American people deserve nothing less.

Earlier today, the Senate voted to stop all that would permit the abuses of American civil liberties to continue for another 4 years. Shame.

The message of this vote is not just about the PATRIOT Act but the message that the Senate can stand up, the Senate can stand against an overreaching Executive of any party, any party that has sacrificed our liberties and stained our standing before the world.

The PATRIOT Act has gone too far. It has gone too far.

And the system of checks and balances. Thank God for checks and balances. Thank God for the Senate, and may it always stand for the right.

I thank all Senators. I again thank the distinguished Senator from Minnesota. I want to tell him that I wish he and his family and loved ones a merry Christmas, a merry Christmas. I thank him.

The PRESIDING OFFICER (Mr. BURR). Under the previous order, the Senator from Minnesota is recognized.

Mr. MCCAIN. Mr. President, parliamentary inquiry: What is the order?

The PRESIDING OFFICER. The Senator is notified that there is no order after the Senator from Minnesota.

Mr. MCCAIN. I ask my friend to indulge me. I ask unanimous consent I follow the Senator from Minnesota.

The PRESIDING OFFICER. Is there objection? Without objection, it is so ordered.

Mr. MCCAIN. I thank the Chair.

The PRESIDING OFFICER. The Senator from Minnesota.
Mr. DAYTON. Mr. President, I want to associate myself with the remarks made by the great Senator from West Virginia, and he is a great Senator. His 47 years of experience here and wisdom have made him an invaluable Member of this body, a leader of this body, an invaluable mentor to newcomers such as myself, and his fidelity to the Constitution, his understanding of history, his understanding of the appropriate relationship of this body, as an independent branch of Government, with the executive branch has been patriotic, courageous, and right.

I thank him for his remarks and for his kind words.

I also want to share the outrage that he expressed, and the previous speaker, the distinguished Senator from California expressed, about these disclosures. Yet another one today, reading in the New York Times about the secret spying on American citizens by the National Security Agency, in contradiction in contrast to the bedrock principle, that America will not engage in cruel, inhuman, and degrading treatment of prisoners: First, because it is not American; second, because it invites the same treatment on our soldiers in war; third, because it invites the same treatment on our soldiers; and, third, because it doesn’t work. We have found time and again, if you torture a person they will say anything to make the torture stop. That doesn’t give you good information to make America safe. Let me salute Senator McCain for his leadership.

Mr. President, I am troubled by the reports in the New York Times and Washington Post today that this administration, since 9/11, has been engaged in a practice which I thought had been clearly prohibited in America. That is the eavesdropping on individual American citizens, those in America, by major agencies such as the National Security Agency. This all started some 30 years ago during President Nixon’s administration. It was an administration which created an enemy list. If your name was on that list, be careful; J. Edgar Hoover would be looking into every aspect of your life that he could. You might be audited by the Internal Revenue Service and you would be carefully watched and monitored.

I was happy to cosponsor that legislation. I have been raising this issue for the last several years. I know how controversial it can be. A few months ago I had the spotlight focused on me for some comments made at this same desk. But I believe that the issue of torture is one that we have to face forthrightly.

Last week I was traveling in northern Africa and visited with one of our ambassadors to one of the Muslim nations. We talked about the challenges he faces with our involvement in Iraq. He said: The controversy about our involvement in Iraq paled in comparison to the controversy in his country’s role when it came to torture. He said: It is hard for the Muslim population and Arab populations to understand why the United States would abandon a long-term, multidecade commitment to not engaging in torture once they were involved in a war involving Arabs and Muslims. He reminded me—and I didn’t need to be reminded—that we issue a human rights scorecard each year from the Department of State. Some of the questions we ask of countries around the world are: have you incarcerated someone without charges? Are you holding them indefinitely? Are you torturing them? If the answers are affirmative, we give them low marks.

Today, obviously, countries are asking whether the Americans live by the same standards they are imposing on others. JOHN McCAIN’S leadership, along with Senator JOHN WARNER, chairman of the Armed Services Committee, has exuded an important agreement to restate the most basic and bedrock principle, that America will not engage in torture. We will not engage in cruel, inhuman, and degrading treatment of prisoners: First, because it is not American; second, because it invites the same treatment on our soldiers and Americans; and, third, because it doesn’t work. We have found time and again, if you torture a person they will say anything to make the torture stop. That doesn’t give you good information to make America safe. Let me salute Senator McCain for his leadership.

EvAEDROPS DROPPING ON AMERICANS

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Now we find it has been done for several years and several thousand Americans have been the subject of this wiretap and eavesdropping.

Mr. President, that is a troubling development. It says that this administration has decided when it comes to basic rights of Americans, they are above the law, not accountable; they don’t have to follow the ordinary judicial process.

I hope that as soon as we return from this holiday break the appropriate committees will initiate investigations, determine what has occurred, whether it has gone too far. I sincerely hope, on a bipartisan basis, that my colleagues will rally to once again assert the fundamentals when it comes to the right of privacy in America. We want to be safe in America but not at the cost of our freedoms. Unfortunately, has become an issue because of these most recent disclosures.

Mr. SESSIONS. Mr. President, I rejoin bailed by the failure today to move forward with the PATRIOT Act. That piece of legislation is exceedingly important. We know for an absolute fact, as Senator Kyl and others have pointed out, that terrorist organizations and their movements and activities were not properly discovered by law enforcement because of a failure to share information and other restrictions that fell on those investigators.

That has been demonstrated with clarity. In fact, some say had we not had the wall between the CIA and the FBI and they could actually have shared information, we may have even prevented 9/11.

I say this to my friends in this country. Federal agents follow the law. The law said the CIA, which is out dealing with international terrorist groups and others who want to harm the United States, and the FBI, which is given the responsibility of homeland protection and crime enforcement in this country,
were not allowed to share information. And they did not do so. It was part of a governmental reform. I think the Frank Church committee thought they were doing something good, but they ended up creating a wall that prohibited the sharing of information that made it more difficult for law enforcement to do the job we pay them to do.

This afternoon, I saw a lady from New York who was touched by 9/11. She wants this bill passed. As a matter of fact, she was shocked that it was not passed. Why is she shocked? It just passed this Senate a few days ago 100 to 0, by unanimous consent, not a rollcall vote, but unanimous consent, without an objection. It came out of the Senate Judiciary Committee, 18 to 0. We have a host of libertarians on that committee—civil libertarians and libertarians.

Chairman SPECTER is very proud of his heritage of civil liberties. All of us take it seriously in that committee, and it is unanimously.

The bill went to the House, and they passed this very bill that we just blocked. The House passed it with a 75-vote majority even though, in fact, the House had to recede and give about 80 percent of the differences in the House and Senate bill over to the Senate side. The Senate bill was clearly the bill that was the model for the legislation on which we finally voted.

So we go over to the House. They have written the bill and we have some provisions and there is a good bit of discussion over the issues. Finally, a conference report is agreed to. It comes back over here, and all of a sudden we face a filibuster.

The PATRIOT Act will sunset December 31. It will be gone. We will not have the provisions that are in it. Those provisions have played a big role in helping us protect this country from another attack. Who would have thought we would be on the defensive since 9/11 without another attack on this homeland? I hope no one thinks that success to date—praise our Creator—has not been driven in large part by effective law enforcement activities by the FBI, the CIA, and other agencies.

The compromises reached in the conference committee to work out the differences between the House and Senate bill, according to Chairman ARLEN SPECTER, tilted it in favor of the Senate on the disputed provisions by about 80 percent. He said there is not a dime’s worth of difference in terms of whether civil liberties were enhanced or not enhanced in the bill that we just voted on and that came out of committee 18 to 0 and passed the Senate unanimously.

So why would this Senate and the great Democratic Party, except for two of its members, vote to block us from an up or down vote on this? I don’t understand. I think it is a serious matter.

There are provisions in the bill that are important. As I have tried to state, as a Federal prosecutor for 15 years nearly, I remain baffled by the concerns over the bill. I remain baffled because of the fact that every provision in the bill has already been a part of Federal law at some point in time and had never been overruled or found unconstitutional. The law already delineates and makes clear and actually creates frameworks for already exist in current law.

I know from beginning that there was nothing in the bill that was going to be held to be unconstitutional and, indeed, it has not because it was written in such a way that we would not violate the Constitution, and it would be within the principles of our commitment to civil liberties.

All of us are committed to civil liberties. One of our Senators, Mr. BYRD, said we don’t need search warrants written by FBI agents. Absolutely we don’t. We don’t want an investigator being authorized to conduct a search of somebody without an independent order of a judge, and there is nothing in this bill that does that. We don’t change the great protection that you have to have to have a court-approved search warrant, for heaven’s sake. There is nothing in this bill that comes close to that. But these are the kinds of charges that have been made, upsetting people and making them think there is something strange or overarching about this legislation.

It passed with only one negative vote 4 years ago, 90-something to 1.

We need to get our act together on this bill. I urge my colleagues to read the legislation that Senator SPECTER has so carefully written so that anybody can understand what the complaints are, to consider what the Department of Justice has said, to listen to the debate, and actually read the legislation. I am convinced that if colleagues would take a moment to do so, they would realize that our civil liberties are protected and, in fact, we didn’t give to FBI terrorist investigators the same powers an IRS investigator has this very day to subpoena bank records that relate to a person who may not have paid their income taxes. IRS agents can do that on a daily basis.

I see my colleague. Maybe I have already utilized over 10 minutes. If I have, I will be pleased to wrap up and yield the floor. I am over 10 minutes. I feel strongly about this mainly because I am so concerned that people have allowed this vote to become a vote on whether one believes in civil liberties or whether one believes in law enforcement.

That bill was written and came out of committee—Senator LEAHY approved it; he monitored its passage from the beginning—so as not to violate the Constitution, not to undermine our liberties, but to make sure that Federal law enforcement who are trying to keep America safe from another 9/11 from happening here have the same powers as IRS agents. And, indeed, we didn’t even give them that much power, in many instances. They still have loss in some instances.

We need to get our act together on this legislation. We need to move this bill. I don’t think it needs to be any weaker. If we come back and water it down and pass it, it would be a mistake.

I thank the Chair, and I yield the floor.

The PRESIDING OFFICER. Under the previous order, the Senator from Oregon is recognized to propound a unanimous consent request first.

The PRESIDING OFFICER. The Senator from Georgia.

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

The Senator from Oregon.

STOPPING INDECENT PROGRAMMING

Mr. WYDEN. Mr. President, as the session winds down this year, I wanted to take a few minutes to bring to the attention of the Senate a new development that I think will be of great interest to millions of parents and families across the country. As the distinguished President of the Senate knows from our service in the other body, parents are greatly concerned that their children are bombarded every day with obscene, indecent, profane, and violent entertainment on television. Parents come up to us as legislators and say: What are you going to do to stop this trash? What are you going to do to keep indecent programming away from our children’s eyes and ears?

Of course, we all wish for an ideal world where parents would take the most direct action, which is simply to turn off the television set off. That is something that can be done without any Government role. But with parents working—and very often both parents working two jobs each to try to make ends meet—that is not always possible.

So as I began to look at how to solve the indecency problem, I asked what could the Government do in this area to better protect our kids from indecent programming on television? I also asked how to do it in a way without a big government bureaucracy program, a one-size-fits-all approach or where the Federal Government would regulate the actual content of the programs on our television sets.

As I began the search to try to figure out a responsible approach to the problem of indecent programming for children, one of the things I found is one of the cable companies and the big television programmers have set up a special tier of programming for those people who are interested in sports and the people who are interested in movies. I looked at it and found that not only had cable companies done this, it seemed to be working as well.
They found a way to do it that the subscribers like and which was profitable. I said to myself, if that kind of approach works for sports fans and movie fans, why can we not do it for families as well? Why can we not have a special tier of programming that is appropriate for children and works for families, the way we have special programming for sports and movies?

So earlier in this session, I introduced the All Kids programming Act, which would require all video service providers to implement a tier of television programming that is appropriate for children. In my bill, a kids’ tier is defined as a group of 15 or more television stations blocked off in a separate channel area with both programming and commercials on it that are purely kid friendly. Parents would be able to subscribe to this block of stations separate from their regular programming, knowing the programming on their television will not carry material that is obscene, indecent, profane, sexual, or gratuitously violent. In introducing this legislation, it seemed to hit the criteria that were most important of appropriateness, profitability, and formality. Parents still may have to subscribe to a tier that has advertisements that carry foul language, excessive violence, and inappropriate sexual content in order to subscribe to the kids’ tier.

That is not what my legislation called for at all. It said we had to have a tier of programming that is appropriate for children. Let me make sure families get this front and center. I want to make sure families get this issue. One thing I am pleased to see that their proposal included G-rated stations that run child friendly content 24 hours a day. However, it is unclear what will be included in the package that parents must purchase in order to purchase the kids’ tier. Parents still may have to subscribe to a tier of programming that is offensive. I am very appreciative of what Chairman Martin has done in this area because he works for sports and movies.

Yesterday, Time Warner released the details of their kids’ tier offer. I was pleased to see that their proposal included G-rated stations that run child friendly content 24 hours a day. However, it is unclear what will be included in the package that parents must purchase in order to purchase the kids’ tier. Parents still may have to subscribe to a tier of programming that is offensive. I am very appreciative of what Chairman Martin has done in this area because he works for sports and movies.

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The “Out of Iraq Caucus” is composed of about 70 Democratic House members. Their goal is America’s complete withdrawal from Iraq. Personally, I don’t think it makes sense to set an arbitrary withdrawal date, so the terrorists can circle that date on their calendar and know when to leave. It seems to me that the better course is to determine our troop needs based on military requirements on the ground, as determined by our military leaders. House Minority Leader NANCY PELOSI herself has said the immediate withdrawal of our troops from Iraq, and claims that her position represents the majority of her caucus. Leader Pelosi endorsed H.J. Res. 73, a resolution that states:

The deployment of United States forces in Iraq, by direction of Congress, is hereby terminated and the forces involved are to be deployed at the earliest practicable date.

So that is the position of the House Democratic Leader, Ms. Pelosi.

Now, the chairman of the Democratic Party, Howard Dean, has said recently the United States can’t even win in Iraq. He says, “The idea that we’re going to win this war is an idea that, unfortunately, is just plain wrong.” Let me say that again. Howard Dean, the leader of the Democratic Party, believes that “The idea that we’re going to win this war is an idea that, unfortunately, is just plain wrong.”

That is Howard Dean’s assessment of the situation.

Chairman Dean later tried to qualify his comments about the unwinnable nature of the battle in Iraq, but no matter what he says now, it still sounds like “cut and run” to me. If it is not “cut and run” it is at least “cut and jog.”

Let me be clear. Proponents of immediate withdrawal certainly have the right to hold that view, and I believe they do so with patriotism in their hearts. But I have respectfully questioned their judgment.

Our goal should be to achieve victory in Iraq, not merely to pull out based on an arbitrary date on the calendar.

The fact is, we are already on the road to victory in Iraq. The transformation of Iraq from the tyrannical rule of Saddam Hussein to freedom and democracy in just two and a half years is a remarkable success story.

It took us 11 years in our country to get from the Declaration of Independence to the Constitution. And freedom took another giant step forward yesterday with the elections for the first permanent democratic government in Iraqi history.

Of course, the news we have now is still preliminary. But early news reports indicate that 11 million Iraqis went to the polls yesterday, once again staining their fingers with indelible purple ink to signify that they had voted.

That is an overall turnout rate of over 70 percent, compared to 60 percent here a year ago, which was a good turnout for us, higher than normal—70 percent of them going to the polls, proudly holding up their ink-stained fingers, many of them not certain they wouldn’t be killed by exercising that right to vote. What is there not to admire about that, an extraordinary performance on the part of the Iraqi people?

As I indicated, that turnout rate exceeded that of their previous election, the constitutional referendum in October. And the turnout rate for that referendum exceeded the election prior to that, for the interim government in January. Most important, turnout among Sunnis yesterday appears to have been particularly robust, as with each election Sunnis have gotten more involved in the democratic process.

We may not know the results of the elections yet, but we know the Iraqi people are the winners. They have repeatedly defied the terrorists by voting for democracy and their future.

Yesterday’s elections have created a 275-member council of representatives, who will govern Iraq with the consent of the people.

It has to be said that the situation in Iraq is brighter and better for all Americans.

Out of Iraq Caucus—when he was in power from 1979 to 2003—in that period, over 4,000 political prisoners were summarily executed, 50,000 Kurds were killed, 395,000 people were forced to flee Iraq, there were no free elections whatsoever, no free newspapers, and Hussein, of course, stood above the law.

What has the situation been since 2003, since the fall of Saddam? Iraqis are now innocent until proven guilty, and Saddam himself is being given a fair trial, something he gave no one.

Seventy-five Kurds were elected to the interim Parliament, when during Saddam’s regime, 50,000 of them were murdered. Over 270,000 people repatriated, when during Saddam’s regime, 395,000 people left the country; 9.8 million Iraqis are free now, more than ever before.

There are over 100 free newspapers in Iraq. They have a robust free press there, and Hussein, as I suggested earlier, is now on trial, being given the kind of trial he gave no one.

What has much is left to do, but now we are heading in the right direction. Iraqis are feeling positive about the direction of their country as well. According to an ABC News poll, 98 percent of Iraqis think the security situation in the country will be better in a year. Two-thirds of them expressed confidence in the Iraqi Army and the Iraqi police.
These people are on the ground in Iraq every day. They are living in the midst of the war on terror. I think we should give their opinions great weight.

Look at all the progress that has been made. The 24-year reign of terror is over, and a new, democratic, free Iraq is emerging. Voter turnout in their national elections yesterday was reportedly very heavy, as I indicated. So Iraqis are optimistic about their future. They think the fight against the terrorists is a message of democracy is worth fighting for.

We should stand by them and do no less. We need to complete the job, and our strategy is to stay and win—not cut and run.

I yield the floor.

The PRESIDING OFFICER. The Senator from Arkansas.

TAX RELIEF FOR AMERICANS IN COMBAT ACT EXTENSION

Mr. BURNS. Mr. President, I rise today to commend and thank my colleagues for including a 1-year extension of the Tax Relief for Americans in Combat Act as part of the Gulf Opportunity Zone Act of 2005. This measure corrects a discrepancy in the Tax Code that puts men and women serving in combat situations at a disadvantage to those earning nontaxable combat pay.

To give my colleagues a bit of history on this, in 2003, I approached the distinguished chairman of the Senate Finance Committee, Senator Chuck Grassley, and asked him to join me in an effort to get a fresh look at the overall picture of how our Tax Code treats our military. I was very pleased when they agreed to work with me, and was delighted to jointly request an expedited study by the Government Accountability Office. It was an honor for me to work with them. I also must say their staff have been nothing but a delight to work with throughout this process.

The GAO made their study, and they had some interesting findings.

One of those findings was especially important and necessitated immediate attention. In a nutshell, what they found is service men and women who were serving in combat zones and receiving nontaxable combat pay were not able to also take advantage of the earned-income tax credit and the child tax credit. Imagine the result was thousands of our men and women serving in combat—in places such as Iraq, Afghanistan, and other places around the globe—were seeing a reduction or the elimination of their earned-income tax credit or child tax credit. In effect, losing money. In other words, the Tax Code has the impact of penalizing them for serving in combat.

The GAO report characterized this as an unintended consequence. I say it is plain wrong. I was pleased to introduce legislation to try to fix this glitch. Back in 2004 we passed Tax Relief for Americans In Combat Act. The bill allowed men and women in uniform serving in combat to include combat pay for the purpose of calculating their earned-income and child tax credit benefits. In other words, they were able to continue receiving their rightful combat pay exclusions while also being able to take advantage of other tax credits. However, what we passed in 2004 expires at the end of this year. So I am pleased today’s action in effect extends the legislation for one more year.

I thank, again, Senator Max Baucus for his leadership in helping extend it for another year. Also, I thank Senators John Kerry and Barack Obama for their leadership in taking up the fight when someone saw the opportunity to do so, to ensure our men and women in combat are fairly treated.

The urgency of this situation is highlighted especially when you focus on our troops whom it affects. We are talking about troops in combat for more than 6 months. They are at lower pay grades and tend to be married with children. They have little or no savings or spousal income. The GAO suggested the amount of tax benefit loss could be up to $4,500 for enlisted personnel and as much as $40,000 for officers. That is make-or-break money for a lot of these people. They are already under enormous stress.

I am glad we could come together in this bipartisan fashion and extend this for another year. The bill corrects the problem and lets our troops who are risking life and limb for us know that while they are away fighting for us, we are in the Senate fighting for them and for their families.

I yield the floor and suggest the absence of a quorum.

The PRESIDING OFFICER. The Senator.

The assistant legislative clerk proceeded to call the roll.

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

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

Mr. BURNS. Mr. President, I inquire of the Chair, are we on the PATRIOT Act or what is the order?

The PRESIDING OFFICER. The Senator is correct, we are currently on the PATRIOT Act.

Mr. BURNS. I ask unanimous consent I be allowed to speak for up to 15 minutes—and I don’t think it will be that much—as if in morning business.

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

Iraq

Mr. BURNS. Mr. President, I heard the words of our assistant leader on the majority side and wanted to come to the Senate. These words may get lost in the swirl of the times with the holidays, but yesterday was truly a historic time not only for the people of Iraq, but for the peace process in the Middle East.

There was not a doubt in anyone’s mind around the world what that was about yesterday. They not only elected permanent representation in their government that will move on and try to finish their constitution, but it was a symbol of a people who voted for peace, security, and a new economic future.

That is what that was all about yesterday.

I congratulate the people of Iraq who, with a great deal of courage, turned out and stood in lines and voted their will. This is what this whole exercise has been about.

I am going to message with not only this Congress but to some who fail to see how much hope was on display yesterday: there is hope for the future. Now we have little girls going to school in Iraq. Hope for families, that they can participate in a republican form of democracy, and to change the economic culture of those people who live in Iraq.

Think of the possibilities. The success in Iraq also has done another thing that will change Iraq, but it will change the whole area. For the first time since World War I there will be a transportation and communication corridor that will change the economic culture from Tel Aviv to Kuwait. Think of that. It puts Amman back on the trade route, so to speak. King Abdullah, the leader of Jordan, understands this. And as he looks at that, it puts Amman back on the trade route.

What about the future? Anyone who has visited Iraq has seen this, probably in Baghdad, or wherever. But I will tell you what this farm kid has seen on his visit to Iraq. When we were in Mosul we saw dry land, farming, good soil. There are two great rivers with irrigation systems from both of them. I saw the kind of dirt it takes in which to build an economy.

Let’s don’t talk about gas or oil. Let’s talk about the very industry that contributes more to the GDP of any country in the world, and that is agriculture. They have the ability to be the breadbasket of the Middle East. As you know, most of the Middle East is desert. Most of it has soil that is very thin, and there are not many nutrients in it. And even where you find those areas where they have it, it is in need of water. Water isn’t there.

I looked at the north of Israel one time, and I understood the problem there. The problem there has to do with water, the ability to take water out of the Jordan River. You have two great river systems in Iraq.

The next step in this budding new freedom is the cornerstone of freedom, and that is land ownership, making people productive, growing renewable resources, providing for your family, but also providing a great export out of Iraq and becoming a trading partner with their neighbors.

We cannot change the ethnic culture, nor can we change the Islamic culture, but we can change the economic culture to where more people of that society participate in the economic well-
being of their country. Just think of the possibilities and the hope it brings to the next generations of those folks.

If you can find something to export—and I will tell you, I look at Jordan. There is a country that is not very wealthy. The only thing they have to export is their hope, and the world can only use so much potash.

But they understand communications and transportation. So there is great hope there now. There is the hope of land and the hope of participation in supplying food and fiber, not only for their own people, but to export to other neighboring countries. That corridor is now established with the free movement not only of people, but also goods and services.

That corridor will widen. It will effect the way people do business in Syria and the way they do business in Iran. It will change even how they do business in Egypt. The Nile Delta, a very fertile delta, now will have some competition and good business.

Also, it will have possibilities for our country when those economies take hold. And it is not going to happen by next week, or next year, or maybe not even for the next 5 years. But you are going to see it happen because of this taste of freedom, land ownership, independence, and to be able to participate in their own government, and, yes, even in their own provincial governments.

So the possibilities of peace and stability and economic advancement have never been greater than at any time in history since World War I. Yet there will be those who say we should not be there helping freedom-loving people achieve the same dream, having the same hopes we have for our next generation, our children, and our grandchildren.

Hope is eternal. Now they have a future, a future they have never had since the days 100 years ago. And the impact of that will spread throughout the Middle East. It will happen. The President comes from an agricultural State with land ownership, productivity, and exports. My good friend from Iowa, my goodness; they are the breadbasket of the world. They can grow more in Iowa with what falls out of their pocket accidentally than we can, on purpose, in Montana, I will tell you. What a great and blessed State, and the same for the State of my friend from Texas, who is on the floor.

But what makes it operate is land ownership and participation in the economy. Then the terrorists have nobody to recruit because there is hope.

Our Marines, our Army, and our Air Force paid a heavy price because they, too, believe this legacy of freedom, to be passed on from one generation to another, is worth dying for.

I had a lady say: "If you wanted to take a poll in Iraq, if you polled our military people, that poll would say they don't want to be there."

I said: Well, if you took a poll in the English Channel on June 6, 1944, they didn't want to be there either. What was that for? Countries had been overrun by a tyrant who brought nothing but tyranny. And they were an enemy of this country and our ideals and our principles.

The Force paid a heavy price because they, too, believed this legacy of freedom, to be passed on from one generation to another, is worth fighting for.

This President understands a vision of hope for freedom-loving people everywhere. And what it offers to their citizens is beyond some folks' comprehension. Freedom is not free. Hope is not free. There must be sacrifice.

Yesterday, those folks lined up by the droves to have the opportunity of changing their lives, sending a strong message to the rest of the world: Terrorists, you are not welcome here anymore.

That is the greatest enemy terrorists have when the fires of freedom burn in the hearts of a people in a line where they stand, where they vote.

That is the vision I have for the Middle East. It is very clear. It is clear that with that reform comes land ownership, irrigation systems, dry land farming, and participation in the world of commerce. Not only in that, but in goods and services also. Iraqis are a very talented people, a people who have that fire of freedom in their heart. We wish them well, and we stand beside them as that fledgling democracy, that republican form of government, gets its kick-start. And it really got a kick-start yesterday. We wish them well. We congratulate them for their courage to stand up and be counted.

I yield the floor.

Mr. HARKIN. I suggest the absence of a quorum.

The PRESIDING OFFICER. The clerk will call the roll.

The assistant legislative clerk proceeded to call the roll.

Mr. HARKIN. Mr. President, I ask unanimous consent that the quorum call be rescinded.

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

Mr. HARKIN. Mr. President, I see my friend, RICHARD BURR, the outstanding Senator from North Carolina, on the floor. North Carolina, of course, is the home State of that great school, Appalachian State. I know that after their defeat tonight under the paws of the Panthers, it will continue to be a great school and a great football team.

My good friend and I have made a little wager on the game tonight: six North Carolina pork chops versus six Iowa pork chops. You see, I say to my friend, just as Iowa is No. 1 in pork production, and North Carolina is No. 2 in pork production, after tonight, Iowa will be No. 1 in 1-A football, and North Carolina will be No. 2 in 1-A football.

So, again, I look forward to dining on those great North Carolina pork chops.
I ask my friend, please, would you throw in some of that North Carolina barbecue sauce with them? I yield the floor.

EXHIBIT 1
From the Des Moines Register, Dec. 14, 2005

PANTHER FOOTBALL A TO Z

Mr. BURR. Mr. President, we will yield the floor.

Mr. President, I take this opportunity to congratulate Chancellor Peacock and gratulate Senator Harkin that almost all of the tickets turned back in by the Northern Iowa Panthers were purchased by North Carolina constituents who will be at that game.

Appalachian State advanced to the championship game with a 29–23 victory over rival Furman University. Appalachian took the lead with 2 minutes 17 seconds left with, an 11-play, 67-yard drive led by its quarterback Trey Elder, who was filling in for a starting quarterback Ritchie Williams. They held off a last-minute threat and picked up a fumble by Furman and ran it back to Furman’s 1-yard line, where that game ended.

Two of the team’s three losses were to I-A teams—Kansas University and the tenth-ranked LSU Tigers. The Charlotte Observer named the Mountaineers the most successful college football program in the State over the past 20 years.

Among their famous alumni are Dallas Cowboys linebacker Dexter Coakley, and former Redskins runningback John Settle.

Coach Jerry Moore is the winningest coach in Southern Conference history, with a string of 16 winning seasons in 17 years, with a record of 139–67. This is his 13th playoff appearance as a head coach. Coach Moore perfected his skills under his colleague in the House, Congressman Tom Osborne.

When Appalachian wins tonight’s showdown, it will be the first time a university from the State of North Carolina has ever won a national football championship.

Senator Harkin doesn’t need to take my word for it or the sports reporters or the commentators opining on the success of Coach Moore and his Mountaineers. Senator Harkin needs to go no further than his own backyard to find someone who can attest to Jerry Moore’s ability to prepare the Mountaineers for tonight’s game. That is because Coach Moore counts as one of his closest friends a man synonymous with Iowa football—former Hawkeyes head coach, Hayden Fry, with whom Jerry Moore started his coaching career at SMU.

Mr. President, Appalachian State University was started as a teachers college in 1899. Its enrollment is slightly over 14,000 students. It is the sixth largest State university in our university system in North Carolina. It has one of the highest graduation rates of student athlete football players in the State, and a few years ago it ranked only behind Duke in that distinction.

I take this opportunity to congratulate the Northern Iowa Panthers. I congratulate Chancellor Peacock and Coach Moore but, more importantly, the two teams who have reached the final championship game tonight.
will be one loser, and that will be my colleague from Iowa as he prepares to send those pork chops to North Carolina.

With that, I yield the floor.

Mr. HARKIN. Mr. President, I suggest unanimous consent to proceed quickly.

The PRESIDING OFFICER. The clerk will call the roll.

The assistant legislative clerk proceeded to call the roll.

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

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

CORD BLOOD LEGISLATION

Mr. HARKIN. Mr. President, yesterday afternoon, the majority leader offered a unanimous consent request to take up and pass, without any amendments or any further action, H.R. 2520, a bill to collect cord blood for use in therapies for various kinds of blood diseases. I objected to that unanimous consent request after quite a bit of talk on the floor.

As I explained yesterday, I support this bill. I am a cosponsor of this bill. In fact, I joined with Senator SPECTER 2 years ago to create the National Cord Blood Banking Program by including $10 million for that purpose in the fiscal year 2004 Labor, Health and Human Services, and Education appropriations bill, of which I am ranking member. We have been funding that program every year since. So I have been in the lead in championing cord blood therapies by getting the program funded and keeping it funded.

Nevertheless, I objected to the unanimous consent request because I believe the Senate should take up the cord blood bill at the same time we take up H.R. 810, which is the Stem Cell Research Enhancement Act.

That is what the House did, and that is what the House passed. The House included both bills on May 24 of this year, and we have been waiting and waiting and waiting in the Senate to do the same thing. We keep hearing from the majority leader that he wants to bring up H.R. 810. In fact, in what I thought was a very courageous speech the majority leader gave on July 29, he said he would vote for H.R. 810. But we can't seem to bring it up on the Senate floor.

Members on the Republican side keep coming over here. So I have been in the lead in championing cord blood therapies by getting the program funded and keeping it funded.

So I wanted to make it very clear today, No. 1, that I have taken off my hold on the unanimous consent. They want to bring it out again. Secondly, Senator SPECTER and I have taken steps in the Appropriations Committee both to set up the registry in there and also to set up the registry. We have already seen some results. We have some talk yesterday that maybe there is not a registry out there. Of course there is a registry. As I said, it went up 24 percent last year.

H.R. 2520 basically authorizes what we are already doing, anyway. That is fine. But I implore my colleagues who are interested in this, as I am, come out and talk about the funding. Talk about the 3,900 fewer babies, young people, who will not get cord blood because we cut the funding, at least not cut it in the Labor-Health and Human Services Appropriations bill. But it is being cut. It should not be. We put the money in there. So if my colleagues feel strongly about banking cord blood and using that cord blood to save lives, they ought to be out here demanding that we not cut it from where we put in the Senate bill. But I have not heard one person come on the floor and take that up and say: No, we are not going to agree to those cuts.

If Senators want to do more for cord blood banking, they should increase the funding, not cut it. But if Senators want to go ahead and pass H.R. 2520, fine, I have no problem with that. There is no harm in passing language that authorizes work that is already being done by the Appropriations Committee. But I must tell you, the majority leader has kept saying he wants to make sure we bring up H.R. 810.

Senator HATCH from Utah said we are going to bring up H.R. 810. We are doing exactly what the House did this year—let it go that way. The majority leader has kept saying he wants to make sure we bring up H.R. 810.

So I wanted to make it very clear today, No. 1, that I have taken off my hold on the unanimous consent. They want to bring it out again. Secondly, Senator SPECTER and I have taken steps in the Appropriations Committee both to put the money in there and also to set up the registry. We have already seen some results. We have some talk yesterday that maybe there is not a registry out there. Of course there is a registry. As I said, it went up 24 percent last year.

H.R. 2520 basically authorizes what we are already doing, anyway. That is fine. But I implore my colleagues who are interested in this, as I am, come out and talk about the funding. Talk about the 3,900 fewer babies, young people, who will not get cord blood because we cut the funding from $9.9 million to less than $4 million. Let us hear some talk about that rather than being here and passing an authorizing bill, which does not do one single
thing more than what we are doing already.

What it does is make sure the funding is there for the registry and to collect the cord blood and to bank it so that people and young people who have these terrible diseases can get the cord blood to help them.

I hope we do not make these cuts in the Labor-HHS appropriations bill. It is there, but we should not cut it. And if they do, I will have more to say about it. Even when we return in January and February, I hope we can bring up H.R. 810, have a good debate on it, and let us vote it up or down, as the House did, and send it on to the President so we can get on with the vital research that is needed on embryonic stem cell research.

I conclude with this: There are some stories in the paper today—there were a few yesterday—a front-page story today about a South Korean research doctor and the fact that he may have falsified some stem cell lines. There are indications, at least in my reading of the medical journal, there is some reason to believe he actually did do that, that it was falsified. Then I heard some comments from the chairman, well, see, there is the problem with stem cell research.

That points out the necessity for us to authorize it, to have the National Institutes of Health supervise it, have jurisdiction over it, so that it is done in an ethical way, where we can monitor it and make sure we do not have rogue elements riding off doing their own thing, so we have standards by which we can measure stem cell research, so we can have legitimate, ethical, moral guidelines which researchers can follow, and we can know who is doing the legitimate good work and know who the outliers are.

The fact that this story has come out today makes it even more imperative that we pass H.R. 810 and we give National Institutes of Health jurisdiction oversight over this kind of research.

I yield the floor.

Mr. BINGAMAN. I suggest the absence of a quorum.

The PRESIDING OFFICER. The clerk will call the roll.

The assistant Journal clerk proceeded to call the roll.

Mr. WYDEN. Mr. President, I ask unanimous consent that the order for the quorum be dispensed with.

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

FEDERAL TRADE COMMISSION NOMINATIONS

Mr. WYDEN. Mr. President, in the final hours of this session of the Senate, the Senate is going to approve two nominees to the Federal Trade Commission. I take a few minutes tonight to describe why I want to be on record tonight against the nomination of both these individuals.

What it comes to energy, the Federal Trade Commission essentially is out of the consumer protection business. Well over a year ago, I released a report documenting the Federal Trade Commission’s campaign of inaction when it comes to protecting our consumers at the gas pumps. My report documented how the Federal Trade Commission has refused to challenge oil industry mergers, the Government Accountability Office says would raise gas prices at the pump by 7 cents a gallon alone on the west coast.

My report also documented how the Federal Trade Commission failed to act when refineries had been shut down or to stop anticompetitive practices such as redlining along pricing. Since then nothing has changed.

Despite what we recently record high prices for consumers, and record profits by major oil companies—what we have seen is a record level of inaction by the Federal Trade Commission on behalf of energy consumers.

In the last few months, when we saw the price of gasoline soar to an all-time record high, the Federal Trade Commission was invisible. As far as I can tell, the Federal Trade Commission failed to take any action at all in the wake of the hurricanes in the gulf that sent the price of gas skyrocketing to over $3 a gallon across the country.

If you do a Google search on FTC and gasoline, you will see all comes up to indicate that the Federal Trade Commission has taken any action on behalf of energy consumers. What you do find are statements by the Chair of the Federal Trade Commission arguing again against giving the agency additional authority to protect consumers against price gouging at the pump.

For example, the Federal Trade Commission Chair recently made the statement opposing an effort here in the Senate to have a price gouging law because “they are not simple to enforce and they could do more harm to consumers.”

The fact, however, is a number of States do have price gouging laws. Two years ago I testified at a joint hearing recently here in the Senate that these laws are, in fact, beneficial.

In her testimony before a joint Senate hearing last month, the Chair of the Federal Trade Commission, Debra Majoras, described what I believe to be an astoundingly serious theory of consumer protection when she essentially said there is no need for a Federal price gouging law no matter how high the price of gasoline goes. The argument was by the Chair of the Federal Trade Commission that price gouging is a local issue even if the price gouger is a major multinational oil company.

FTC officials also testified before the Congress that the agency has no authority to stop price gouging by individual companies.

Despite this clear gap in the agency’s authority, the agency has refused to say what additional authority it needs to go after price gouging, and others have pressed them to do for years.

There are unquestionable efforts in the private marketplace to exploit consumers, and it didn’t start with Hurricane Katrina. As the Wall Street Journal documented recently, gas prices for much of this recent period have increased twice as fast as crude oil prices. Clearly, a number of oil companies are not simply passing on higher crude oil costs here. If they are, the underlying substantial increases to the cost of gas above and beyond the higher cost of crude oil.

Since the early 1970s and for much of this year, there has never been the disparity between the prices in the price of gas and increases in the price of crude oil. This was not seen even in the days of the long gas lines following the OPEC embargo.

Over the past 15 years, gasoline prices never rose more than 5 percent higher in a year than the cost of crude increase. But in the past year, gas price increases outpaced crude by 36 percent. After Hurricane Katrina, the price difference soared even higher to 65 percent.

Further evidence of price gouging could be found in what happened on the west coast immediately following Hurricane Katrina, when prices surged 15 cents per gallon over a matter of days. For example, oil industry officials, the Federal Trade Commission, and others have maintained that the west coast was an isolated gasoline market from the rest of the country. West coast supplies were not affected by the hurricanes.

The west coast gets almost none of its gas from the gulf. If the west coast was an isolated market, as the oil industry has claimed for years, then Katrina was not a justification for jacking up gas prices on the west coast immediately after the hurricanes.

The Federal Trade Commission is the principal consumer protection agency in the Government. It is the Federal agency that can and should take action when gasoline markets go haywire as they did after the hurricanes. But instead of action, what we have repeatedly seen were excuses.

In the past, the Federal Trade Commission often claimed that it was studying the problem or monitoring the gasoline markets as an excuse for inaction on gas pricing.

Recently, the Federal Trade Commission’s campaign of inaction has even extended to the studies that the agency does. The Federal Trade Commission chair testified last week that a study of gas price gouging that Congress required the FTC to complete by this spring would not be ready until next spring. In effect, the campaign of inaction is now approaching the point of paralysis where the agency won’t even deliver promptly on commitments that it has made to study the issue.

In May of 2004 the Government Accountability Office released a major study showing how oil industry mergers and the Federal Trade Commission...
allowed to go through in the 1990s substantially increased concentration in the oil industry and increased gas prices for consumers by as much as 7 cents per gallon on the west coast.

Specifically, the Government Accountability Office found that during the 1990s the Federal Trade Commission allowed a wave of oil industry mergers to proceed, that these mergers had substantially increased concentration in the oil industry, and that almost all of the largest of the oil industry mega mergers examined by the auditors each had increased gasoline prices. Essentially, the Government Accountability Office found that the Federal Trade Commission’s policies on mergers had permitted serial price gouging.

Two years ago, when current Federal Trade Commission Chair Deborah Majoras last came before the Senate for confirmation, I asked a key question. Despite her promise to do so, I have yet to receive any response from the Chairman of the Federal Trade Commission. The Government Accountability Office is not alone in documenting how Government regulators have been missing in action when it comes to protecting our consumers at the gas pump. Since 2001, oil industry mergers totalling more than $19 billion have gone unchallenged by the Federal Trade Commission, according to a recent article in Bloomberg News. The article also reported that these unchecked mergers may have contributed to the highest gasoline prices in the past 20 years.

According to the Federal Trade Commission’s own records, the agency imposed no conditions on 28 of 33 oil mergers to proceed, that these mergers had substantially increased concentration in the oil industry, and that almost all of the largest of the oil industry mega mergers examined by the auditors each had increased gasoline prices. Essentially, the Government Accountability Office found that the Federal Trade Commission’s policies on mergers had permitted serial price gouging.

In other words, the Federal Trade Commission, oil industry officials, and consumer groups all agree in these concentrated markets individual firms can raise prices and extract monopoly profits, the Federal Trade Commission has failed to take effective action to check oil industry mergers. In the vast majority of cases, the Federal Trade Commission took no action at all.

The Federal Trade Commission’s inaction on oil mergers is once again a front burner issue with the recent announcement that ConocoPhillips, an oil company formed from a series of mergers the Federal Trade Commission allowed, is acquiring Burlington Resources to create one of the largest U.S. natural gas producers. Many in the oil and gas industry expect this merger announcement will lead to a similar wave of consolidation in the natural gas industry. This, in turn, will lead to greater consolidation of the industry and fewer choices for consumers.

In addition to the inaction on merger issues, the Federal Trade Commission has also failed to act against proven areas of anticompetitive activity. Major oil companies are charging, in some instances, dealers’ discriminatory “service prices” that make it impossible for dealers to compete fairly with company-owned stations or even other dealers in the same geographic area. With zone pricing, one oil company may charge its dealers a higher price for gasoline at stations at different prices. The cost to the oil company of making the gas is the same. In many cases, the cost of delivering that gas to the service station is the same, but the price the station pays is not the same. And the station that pays the higher price is not able to compete, and eventually that station goes out of business and there is further concentration in that particular community’s market.

Another example of anticompetitive practices that occur in gas markets is a practice known as redlining. This involves oil companies making certain areas off limits to independent gas distributors, known as jobbers, who bring competition to a particular area. The Federal Trade Commission’s own investigation of west coast gas markets found that the practice of redlining was rampant on the west coast, but the Federal Trade Commission concluded that it could only take action to stop this anticompetitive practice if the redlining was the result of out and out collusion, a standard that is almost impossible to prove.

In my home State, one courageous gasoline dealer took on the major oil companies and won a multimillion-dollar court judgment in a case that involved redlining. This dealer gave the evidence that was used to win his case in court to the Federal Trade Commission. The Federal Trade Commission, the premier consumer protection agency in the Federal Government, failed to do anything to help this dealer or to reign in the anticompetitive practices at issue.

In areas other than energy, the Federal Trade Commission, in my view, has made a significant contribution to protecting consumers. In other areas, the Federal Trade Commission has not hesitated to move aggressively on behalf of the consumer public. To give an example, the Federal Trade Commission created a Do Not Call Program to prevent consumers from being hassled at home. With its Do Not Call Program, the agency pushed to protect consumers to the limits of its authorit and even went beyond what the courts say it had authority to do.

For some reason, in the case of energy, the Federal Trade Commission had a regulatory blind spot. That has been true, I am sad to report, in both Democrat and Republican administrations. It is a bipartisan blind spot that keeps the agency from looking out for the millions of Americans who consume gasoline and gas products every single day.

The Federal Trade Commission will not even speak out now on behalf of consumers getting gouged at the gas pump. The agency will not use its bully pulpit to even say that record high gas prices are an issue of concern that they will be looking into closely.

The FTC approach on gas prices is one, in my view, that must change. I do not intend to support the business-as-usual approach on energy that has been the hallmark of the Federal Trade Commission. I have met with both the nominees to the Federal Trade Commission, Mr. William Kovacic and Mr. Thomas Rosch. I also asked them to provide me their views in writing in an effort to find out whether they would push the Commission to take a different approach from its long history of inaction in this area.

Unfortunately, neither of these individuals provided me with any compelling evidence that they are committed to change. I, in fact, believe that the Federal Trade Commission might be enhanced. He suggested Federal antitrust laws could be enhanced by encouraging whistleblowers to receive a percentage of
the funds the government recovers from wrongdoers. I certainly agree a qui tam mechanism could provide a useful supplement to Government oversight in many areas. It is not a substitute for the Federal Trade Commission doing its job. And Mr. Kovacic did not tell the Federal Trade Commission’s own approach to the oil industry would change. Given the Federal Trade Commission’s record, given what they have done in the last few years, essentially being AWOL when it comes to energy, Mr. Kovacic realizes the Federal Trade Commission had prior to 1994. That is why I find, at this point, no evidence before taking action. That is why I find, at this point, no evidence that Mr. Kovacic would bring a different kind of outlook to the Federal Trade Commission’s work in the energy field.

Now, the other nominee, Mr. Rosch, had a fascinating proposal. He suggests restoring the Federal Trade Commission’s authority to challenge unilateral conduct affecting competition, authority that the Federal Trade Commission had prior to 1994. That would go a long way toward closing the existing gap in the Agency’s regulatory authority.

Had Mr. Rosch ended his letter to me at that point, I would have been willing to support his nomination. However, he went on to undercut his case when it came to anticompetitive practices in a key area: zone pricing. In effect, before taking any action to deal with this particularly egregious and anticompetitive practice, Mr. Rosch argued for waiting for the outcome of the Federal Trade Commission’s own approach to the oil industry. I want to see a more aggressive approach on behalf of energy consumers. I am not convinced that anything will change if Mr. Kovacic or Mr. Rosch is appointed to the Federal Trade Commission. Both of these individuals are going to get approved by the Senate in the last few hours of this session.

It is my hope, in wrapping up—I see the Senator from Pennsylvania on the floor patiently waited—it is my hope that these two individuals, Mr. Rosch and Mr. Kovacic, will prove that I am incorrect in the judgments I make tonight. I hope they will be aggressive. I hope they will look for opportunities to stand up for the consumer. I hope they will change this course of inaction that has been laid out by Ms. Majoras. If those two individuals, Mr. Kovacic and Mr. Rosch, take those kinds of steps, if they take the kinds of steps I have advocated tonight—to stand up for the energy consumer in this country—they will have my full support.

Mr. President, I yield the floor and suggest the absence of a quorum.

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

DEPARTMENT OF JUSTICE APPROPRIATIONS AUTHORIZATION ACT, FISCAL YEARS 2006 THROUGH 2009

Mr. SANTORUM. Mr. President, I ask unanimous consent that the Committee on the Judiciary be discharged from H.R. 3402, as passed by the House, and the Senate proceed to its immediate consideration.

I ask unanimous consent that the amendment at the desk be agreed to, the bill, as amended, be read a third time and passed, the motion to reconvene be laid upon the table, and any statements relating to the measure be printed in the Record.

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

The amendment (No. 2681) was agreed to.

Mr. LEAHY. Mr. President, I am pleased that the Senate is finally passing H.R. 3402, as amended—a carefully crafted, bipartisan, bicameral compromise to provide for the comprehensive reauthorization of both the Violence Against Women Act, VAWA, and the programs and authorities under the jurisdiction of the Department of Justice, DOJ. It has been a long time in coming.

I thank Senator SPECTER, the Chairman of the Senate Judiciary Committee, and Senators BIDEN and KENNEDY for their hard work and steadfast support for crafting this compromise legislation. I want to especially recognize Senator BIDEN for his longstanding commitment to finding ways to help end violence against women and children. I also deeply appreciate bringing the Violence Against Women Act to the floor and in ensuring that its vital programs continue.

House Judiciary Committee Chair- men SPECTER, HATCH, and Ranking Member CONyers deserve much credit as well for working so closely with us in a bipartisan manner to pass legislation in the House of Representatives. It is no easy task to take two large legislative measures and combine them into a single bipartisan, bicameral agreement. That is exactly what we have done, and we have achieved this milestone because we had the willingness of everyone involved to negotiate in good faith to see VAWA and the Justice Department Appropriations Authorization bill ushered into law this year.

I would like to highlight several of the provisions of this bipartisan measure—a bill that combines the Violence Against Women Act, S. 1187, as passed by the Senate, and the Department of Justice Appropriations Authorization Act, for Fiscal Years 2006 through 2009, H.R. 3402, as passed by the House.

The enactment of the Violence Against Women Act more than a decade ago marked an important national commitment to survivors of domestic violence and sexual assault. I am proud to join Senators BIDEN, HATCH, SPECTER and others as an original cosponsor of our reauthorization effort. The bill that passed the Senate had 58 cosponsors. Enactment of this measure will further our goal of ending domestic violence, dating violence, sexual assault, and stalking.

Earlier in my career as a prosecutor in Vermont, I witnessed the devastating effects of domestic violence. Violence and abuse affect people of all walks of life, regardless of gender, race, culture, age, class or sexuality. Such violence is a crime and it is always wrong, whether the abuser is a family member, someone the victim is dating, a current or past spouse, boyfriend, or girlfriend, an acquaintance, or a stranger.

The National Crime Victimization Survey estimates there were 681,730 non-fatal, violent incidents committed against victims by current and former spouses, boyfriends or girlfriends—also known as intimate partners—during 2001. Of those incidents, 85 percent were against women. The rate of non-fatal intimate partner violence against women has fallen steadily since 1993, when the rate was 9.8 incidents per 1,000 people. In 2001, the number fell to 5.0 incidents per 1,000 people, nearly a 50 percent reduction, but still unacceptably high. This spring, the survey found that 1,600 women were killed in 1976 by a current or former spouse or boyfriend, while in 2000 some