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CONGRESSIONAL RECORD — SENATE

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USA PATRIOT ACT

Mr. CORNYN. Mr. President, unless the Congress acts, on December 31, 2005, 16 different provisions in the USA PATRIOT Act will expire.

Two days ago we had a vote to determine whether a minority in the Senate would allow the legislative majority the chance to have an up-or-down vote on the reauthorization of the PATRIOT Act. As everyone knows, that vote failed. Fifty-two senators voted to close off debate. There being a requirement of 60 votes to cut off debate, that threshold was not reached. This did not reauthorize the PATRIOT Act.

So here we are with the clock ticking, with America’s security at risk. We find ourselves in the incredible position of seeing certain ordinary law enforcement activities and procedures that are used every day in State and Federal courts all across this country will, in about 2 weeks, no longer be available in the case of international terrorists or spies or cases involving the Foreign Intelligence Surveillance Act.

Perhaps the one provision of the PATRIOT Act that will expire that causes most concern is the so called wall. That, of course, is the term used to describe that wall of October of 2001—was a wall that separated the sharing of information between our law enforcement personnel and our intelligence authorities. It is clear, as the 9/11 Commission demonstrated, that this wall made us less safe. It was not required by the Constitution. It was not required by any provisions passed by this Senate and signed by the President. It was simply a choice made by the Department of Justice to prevent the sharing of information.

We learned from the bombing of the World Trade Center in 1993 and its investigation, as well as from the terrible events of September 11, the 9/11 Commission concluded this wall, which was not constitutionally required, prevented the sharing of information between law enforcement and intelligence authorities and this prohibition contributed to the terrible events on September 11.

It was imperative the Congress act as quickly and as carefully as possible to remove any impediments that were not otherwise mandated by the Constitution from investigating and preventing future terrorist attacks against this country.

Those who have opposed this up-or-down vote in the Senate with regard to the reauthorization of the PATRIOT Act are asking us to make a false choice. In other words, they are saying if the PATRIOT Act is reauthorized, somehow Americans’ civil liberties will be in jeopardy. They are asking us—or telling us—that we have to choose between our national security and our civil liberties. That, to repeat, is a false choice.

The fact is, we can have a balanced reauthorization of the PATRIOT Act that will protect America from future terrorist attacks. We can continue to disrupt the terrorist cells both here at home and abroad that endanger us and protect our civil liberties at the same time.

This country was founded upon a belief in individual freedom and the protection of individuals against the overwhelming power of the Government. And we have, for more than 200 years, written into our laws—not to mention the Constitution—various protections on behalf of individual rights and our individual freedoms are protected.

But the No. 1 responsibility of the Federal Government is to keep us safe. There is no other responsibility that compares anywhere close to that imperative. That is why I believe the PATRIOT Act must be reauthorized, and if we fail to act before these provisions expire on December 31, 2005, we will not have met our responsibilities. Indeed, we will have contributed to making this country much more dangerous than it would otherwise be.

Now, as we recall, after the terrible events of September 11, Congress, for 6 weeks, debated the original passage of the PATRIOT Act and, in a vote of 98 to 2, reauthorized the PATRIOT Act. This provided that these 16 provisions would expire at the end of this year. The vote to enact this legislation was 98 to 1 in the Senate, after 6 weeks of debate. In the House, the vote was 365 to 66, again not quite as overwhelming as it was in the Senate, but it was a lopsided vote in favor of passing the PATRIOT Act. And it was signed into law on October 26, 2001.

Now, I have been surprised at how much misunderstanding there is surrounding the PATRIOT Act, how much outright mythology and disinformation there has been by those who are not just concerned about civil liberties, but those who are actually engaging in almost paranoid delusions about what it is that the PATRIOT Act provides in terms of the authorities to combat and to break up terrorist activities.

The fact is, anyone who has been involved with or even remotely acquainted with our criminal justice system knows and will tell you that the provisions of the PATRIOT Act merely extended to national security cases many of the tools that are used every day in courts all across the Nation and throughout the States. So this breathlessness, this sense of the existence of conspiracy theories, about the Federal Government deciding to suspend the civil liberties of the American people in pursuit of terrorists, is pure fantasy.

I want to talk about the provisions that are being discussed. I think at least those who are listening can understand there has been careful thought and careful negotiations between the House and the Senate and there has been an awful lot of effort put into trying to strike the right balance.

But what the critics are asking us to do is engage in a willing suspension of disbelief. It is almost unthinkable to me that here we are, some 4 years after the terrible events of September 11th, nominating these same tools almost as if some have forgotten the lessons we learned and lessons we should remember for the rest of our lives.
I was not here in Washington on September 11. I was merely a candidate for the Senate and the attorney general of my State in Texas at the time. I was in Austin, Texas when those planes hit the World Trade Center. We all recoiled in shock and in horror at those terrible events. I remember, since I have been here in Washington, the number of occasions where we have had warnings of intrusions into the airspace around this Capitol, where people here were running out of the Capitol, some in terror, some in tears. And I remember to have another attack here at the Capitol.

As we know, but for the brave acts of some passengers on an airplane who caused that plane to crash in Pennsylvania, it could have been that plane was meant for the White House or the U.S. Capitol, which would have resulted in tremendous additional loss of human life.

So it is amazing to me—and I guess in some ways it is a sign of the times—that our memories are so short and that we need to be reminded about the seriousness of the threat that still remains. We need not let our guard down, instead we need to continue to do everything we can humanly possible to protect the American people against future terrorist attacks.

I know there are some who scoff at it and ridicule the threat, but I would ask them to go back and to read the newspaper accounts, to see the video replays of the terrible events of September 11, and then to reconsider. Those who fear that Government has turned into “big brother” and is simply invading our bedrooms and our libraries and our personal lives in ways that would shock all of us are engaging in, I think, a fantasy.

When you look at the facts—and I would suggest facts are stubborn things—we ought to look at the facts and ask the question that are being batted and then ask ourselves: Aren’t these the kinds of tools we would want our law enforcement personnel to have to keep us safe?

I think the American people—when they understand, as they will before this debate has concluded, what is at stake here—would want us to act responsibly to extend and continue to provide these ordinary sorts of law enforcement tools to national security cases.

There is no doubt in my mind that a bipartisan majority of the Senate would pass this reauthorization of the PATRIOT Act if allowed to do so. But, indeed, what we are seeing is a fill-buster by a willful minority that is blocking a bipartisan majority from even having the right to cast that vote. I recognize there are some people who have sincere beliefs that reauthorization of the PATRIOT Act is not the right thing to do. While I strenuously disagree with them and I know that there will come a chance to debate with them here on the Senate floor the wisdom of that decision—I respect their right to hold that opinion. But I do not respect the minority when they block a bipartisan majority from having the chance to vote on tools that, if not extended, will leave this country vulnerable to attack.

Again, I am confident that if we had a vote a bipartisan majority of the Senate would see fit to reauthorize the PATRIOT Act and continue these important protections for the American people. But we find ourselves with the clock ticking, time running out, and Americans in danger. If, on December 31, 2005 these important provisions expire because we in the Senate did not act. A direct consequence of this action, or inaction, will endanger our country.

I would ask my colleagues: What has changed since that 98-to-1 vote in the Senate when, in October 2001, after 6 weeks of debate, the PATRIOT Act was passed? Are there reports of rampant abuses of the PATRIOT Act? No. Are there reports of terrorists coming to the floor and explaining to us, that this is too much power for the Government to have, or that somehow we have an imbalance in the power given to the Government, and that we need to strike a right and better balance?

The fact is, Mr. President, all of the skeptics have is speculation, conspiracy theories, and outright fantasy when it comes to the potential of abuse under any of these provisions of the PATRIOT Act. I am convinced that the chairman of the Judiciary Committee in the Senate, Senator Specter, and the conference in the House and Senate have done their very best given the nature of negotiations and compromise to strike the best balance between civil liberties and the protection of the American people. It would be a failure of responsibility and duty for us not to reauthorize the PATRIOT Act.

But what has changed since September 11, 2001? What has changed since October of 2001 to now lead some of our colleagues to say that these provisions are unimportant, are not useful, or are no longer needed? Has the threat of international terrorism receded? Has it gone away?

I looked on the Internet before I came here for a listing, because I wanted to make sure I had all of them, of suspected al-Qaida terrorist attacks across the globe since September of 2001.

In December 2001, a man tried to detonate a shoe bomb on a flight from Paris to Miami. I believe his name is Richard Reid. There was an explosion in April of 2002 at an historic synagogue in Tunisia that left 21 dead, including 14 German tourists. In May of 2002, a car exploded outside a hotel in Karachi, Pakistan, killing 14, including 11 French citizens. In June of 2002, a bomb exploded outside the American consulate in Jeddah, Saudi Arabia, killing 9. In July 2002, bombs exploded on 3 trains and a bus in London, England, killing 52. In October 2002, 22 were killed by 3 suicide bombs, again in Bali, Indonesia.

Just to remind my colleagues what we have been able to do because we have been on our guard, because we have had the PATRIOT Act, because we have equipped our law enforcement and intelligence personnel with the tools necessary to identify and investigate and disrupt terrorist activities, because we have been on the offensive in Afghanistan and Iraq disrupting the ability of terrorists to train, recruit, and then export their terrorist activities, because we have done all of those things, America has not sustained another terrorist attack on our own soil since September 11, 2001. But it is far from certain that it will not happen again.

Some have said it is a matter of when, not if, America will be hit again.
But, thank goodness, because of the diligent efforts of men and women in our law enforcement agencies, in our intelligence agencies, the men and women in our military, and so many other people working together diligently, we have prevented Americans on our soil from becoming targets. There have been at least 10 serious al-Qaeda plots disrupted, including 3 al-Qaida plots to attack inside the United States since September 11.

In mid 2002, the United States disrupted a plot to attack targets on the west coast of the United States using hijacked airplanes. The plotters included at least one major operational planner involved in the events of September 11. In mid 2005, the United States and a partner disrupted a plot to attack targets on the east coast of the United States using hijacked commercial airplanes.

The PRESIDING OFFICER. The time of the Senator from Texas has expired. Mr. CORNYN, you may ask unanimous consent for an additional 15 minutes.

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

Mr. CORNYN. Then there is the Jose Padilla plot in May 2002. The United States and the United Kingdom disrupted that. There was a plot to blow up an apartment building in the United States using a dirty bomb or a radiation dispersal device. In mid 2004, the United States and our partners disrupted a plot that involved urban targets in the United Kingdom. These plots involved using explosives against a variety of sites. Then there was a plot in Karachi, a plot at Heathrow Airport in London, another UK plot in 2004, another Arabian Gulf shipping plot, one in the Straits of Hormuz in 2002, and a tourist site targeted by al-Qaida. In 2003 there have been at least 10 disrupted terrorist attacks as a result of the concerted efforts of our law enforcement and intelligence personnel, at least 3 on American soil since September 2001.

I ask my colleagues who are blocking the vote on the renewal and reauthorization of the PATRIOT Act: What could they possibly be thinking to believe that we ought to voluntarily relinquish the tools that have in part made it possible to keep us safe and to protect Americans from these terrorist attacks? I know, Mr. President, there are others in this Chamber who want to speak on this or related issues. I want to close on one last red herring that has been raised.

As the New York Times reported, the President of the United States has authorized, after counseling with the Department of Justice and various law enforcement agencies, as well as consulting with Congress on up to 12 occasions, the use of intercepted messages from the National Security Agency as part of our ongoing counterterrorism efforts. The New York Times suggested that this was a secret way to threaten the civil liberties of Americans. The fact is, as is now being revealed, Congress was consulted at least 12 times since September 11th about the President’s authorization of these interceptions of communications, interceptions which were not solely within the United States but were from known links to international terrorism in the United States and its territories with international terrorism overseas.

It is perhaps not a coincidence that just before the vote on cloture on the reauthorization of the PATRIOT Act, we learned of one new scheme to disrupt this story. Indeed, at least two Senators—I heard with my own ears—cited this article as a reason why they voted to not allow a bipartisan majority to reauthorize the PATRIOT Act. As it turns out, the author of this article had turned in a book to his publisher 3 months ago. The paper failed to reveal that the story was tied to a book release and sale by the author James Risen. The title of the book is “State of War, The Secret History of the CIA and the Bush Administration.” It is this book that has been raised.

It is a crying shame that America’s safety is endangered by the potential expiration of the PATRIOT Act in part because terrorists are concentrating all their attacks on the hard-fought attempts to get the book released, on the night before the vote on the reauthorization of the Act, and as part of a marketing campaign for selling the book, something that is blatantly misrepresentative of the facts and an attempt strike terror or perhaps paranoia into Senators and others out of some unrealistic and inaccurate concern for invasion of civil liberties.

It is appropriate that Congress have hearings to look into this, but the fact is, the President and his administration have briefed high ranking Members of Congress on 12 occasions since this so-called secret program of intercepting communications between known terrorist suspects in the United States and overseas occurred.

When I came to Washington to serve in the Senate almost 3 years ago, someone jokingly referred to it as a logic free zone where perception is reality. We all got a good laugh out of that. But the hysteria over the USA PATRIOT Act and the fact that people have, in too many instances, not focused on the hard-fought attempts to balance our security with civil liberty, it is distressing that thoughtful and useful provisions is a disservice to the American people. It is not a typical policy disagreement that we sometimes have about taxes or some other issue. This is one that has the grave potential of endangering American lives because we cross the terrorist threat exists. This threat continues to this day.

September 11, while it was 4 years ago, is not an isolated event, as the listing I provided details. Terrorists will, if we let our guard down, hit us again. Then I ask: Where will the blame lie? If we have failed to do everything within our power to protect the American people, we have failed to discharge our duty in this body.

I hope our colleagues who are blocking a bipartisan majority from casting a vote to reauthorize the PATRIOT Act will rethink their views and consider the expiration of these 16 provisions will reconsider their decision. It is unthinkable to me that anyone would allow these provisions to expire. I realize there are differences of opinion. I am happy to have this debate. I think it will prevent the expiration of this Act, but to block a bipartisan majority from having the chance to vote is incredible.

Mr. SESSIONS. Mr. President, will the Senator yield for a question?

Mr. CORNYN. I will.

Mr. SESSIONS. I thank Senator CORNYN for his discussion of this important legislation and legal understanding to the Senate. I urge my colleagues to listen to him.

Senator SPECTER, chairman of the Judiciary Committee and certainly a person who has been a champion of civil liberties all his career, has said that the bill we passed in this body by unanimous consent which went to conference in order to work out differences with the House, came back with 80 percent the provisions contained in the Senate bill untouched, and very few changes in favor of the House version.

I ask the Senator from Texas, the bill we passed here by unanimous consent, is that not the same bill he and I worked on in the Senate, and that came out of the committee unanimously by an 18-to-0 vote after full discussion about those issues?

Mr. CORNYN. The Senator from Alabama is absolutely correct. He serves with great distinction on the Senate Judiciary Committee, as does the current occupant of the Chair. We all know that it is not the most cohesive committee in the Senate. As a matter of fact, we have some pretty serious disagreements about important policy issues. But on the PATRIOT Act, under Senator SPECTER’s guidance, with the ranking member, Senator LEAHY, we were able to reach unanimity and pass the PATRIOT Act out of the Judiciary Committee. That is given the legal minds and the great advocates we have on the Judiciary Committee, if it were not a good bill. To now suggest, as some have, that this has not been well thought through, that is not con tally done, flies in the face of the facts.

If I may, Mr. President, through the Chair, I ask my friend from Alabama,
who has been a distinguished U.S. attorney, served as attorney general of his State before coming to the Senate, and has a lot of experience in law enforcement, are the provisions of the PATRIOT Act that are being debated involving targeting and production of business records and delayed notice search warrants, are these the sort of ordinary tools that are available to prosecutors in State and Federal courts in regular, ordinary, vanilla criminal cases?

Mr. SESSIONS. I thank the Senator from Texas. He is exactly correct. As a former attorney general of Texas, he knows that every county attorney in America can go to a county judge and issue a subpoena for bank records, for medical records, for telephone toll records, for motel records, for library records, and for bookstore records.

That is done every day and the standard is simply whether those records are relevant to an investigation that the Attorney General or district attorney in any county in America is conducting. That is the way the system works. People act as if issuance of a subpoena for somebody's records is a violation of a constitutional rights. That is nonsense.

So I certainly agree. In fact, with regard to a group of records, the power of the FBI to investigate terrorists, in some ways, is far less than that of a county attorney. A 215 order includes health records, library records, bookstore records—I hate to laugh, but—for health records, library records, bookstore records—

The PRESIDING OFFICER. Mr. LEVIN. Mr. President, I ask unanimous consent that I may have 2 additional minutes.

Mr. LEVIN. Sure.

Mr. SESSIONS. I urge him to examine the legislation and to examine the

The PRESIDING OFFICER. The Senator's time has expired.

Mr. SESSIONS. Mr. President, I ask unanimous consent that I may have 2 additional minutes.

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

Mr. SESSIONS. I thank Senator CORNYN from Texas for his steadfast work on this issue. He is an extremely hard-working Senator. He gets these facts right. He is an extremely skilled lawyer and has a great legal mind. I hope the people will listen to his remarks.

We have gone through this bill. This bill was carefully drafted the first time we voted on it. It came out of the Senate 4 years ago with only one "no" vote. We have had 4 years of experience with it. It is going to expire the end of this calendar year. We passed our version of reauthorization by unanimous consent in this body. Our Senate Judiciary Committee, which has some of the most civil libertarian lawyers in the country, together with that matter—passed it out unanimously. I am shocked, surprised, and utterly disappointed that we went to conference—where we maintained position after position on our bill and the House conference committee and their bill, to the extent that about 80 percent of the differing provisions were decided in favor of the Senate—and now have this unbelievable filibuster that blocked a bill which had so much bipartisan support coming up and being considered and given a vote.

I thank the Chair. I see the distinguished ranking Member of the Senate Armed Services Committee on the floor, Senator LEVIN. I am delighted to yield to him at this time.

The PRESIDING OFFICER. The Senator from Michigan is recognized.

Mr. LEVIN. Mr. President, I thank the Chair and my friend from Alabama.

One quick comment on the PATRIOT Act. Of course, everybody in this body wants to renew the PATRIOT Act. That is not the issue. The issue is the contents of that act and whether this body ought to have an opportunity to debate some of the differences between the version that came back to us from conference and the one that left the Senate. There are significant differences.

There is a bipartisan group that opposes the PATRIOT Act in its current form. All want to act so there is no gap. Nobody wants a gap in coverage. Everybody agrees it should be extended. The question is, should it be extended for a short period of time to give those of us who have questions and doubts about some of the provisions that came back from conference that were not in the Senate version an opportunity to debate and hopefully change some of those versions.

Mr. SESSIONS. Mr. President, will the Senator yield just 1 second on that point?

Mr. LEVIN. Sure.

Mr. SESSIONS. I urge him to examine the
changes that are made. I know some have said they are significant. With the Senator's legal skills and ability to analyze, I think he will find they are not nearly as significant as some say. As a matter of fact, most are very small. I believe he will feel comfortable in the conference again voting for this legislation.

I thank the Chair and yield the floor.

Mr. LEVIN. Mr. President, I thank my friend from Alabama. I have,indeed,a serious objection to this bill because it is so serious that it involves the question of whether, under the PATRIOT Act conference report before it is enacted. We all want to extend it to give us that opportunity. But this is not a Democratic or Republican opposition; it is a bipartisan group of Senators who have studied the conference report and have significant differences with it, and I am one of those Senators.

DEPARTMENT OF DEFENSE AUTHORIZATION CONFERENCE REPORT

Mr. LEVIN. Mr. President, I wish to talk about a different bill, a bill we thought was finally put to bed yesterday. When we say "put to bed," what we mean is that the conference is over and that all of the members of the conference have signed the conference sheets, the signature sheets which signify that document that is attached to those sheets is the final version and that then will be presented to both Houses for their consideration.

Senator WARNER came to the Chamber last night to express his dismay with this process. As always, Senator WARNER is extraordinarily honorable. For almost 40 years, he has concerned himself with the subject matter of this added legislation. It is the principle involved. It is the process involved. We cannot possibly operate under a procedure where after a conference is over and the signature sheets are signed then there is an effort made without, I guess, the body reopening the conference by sending it back to conference for reconsideration but just simply looking for a mechanism to add legislation to a conference report which had already been signed.

Senator WARNER said something last night that I concur in 1,000 percent. In fact, everything he said last night I concur in 1,000 percent because he is a Senate man. He is an institution man. He loves this institution. And the idea that we could have a process where a conference report is signed and then, somehow or other, through some mysterious mechanism or means, additional legislation is added to it without that conference being reorganized and the Senate receiving this conference report, referring it back to conference, is a totally unacceptable process.

The chairman of our committee, Senator WARNER, last night said he was not going to accept this process. He would filibuster his own bill if it contained material we had not considered and was now showing up in a conference report. And I would join him in that filibuster. He would exercise the right of the Senator from Virginia to rule that there is out-of-scope material in this conference report, and I would join him in asking the Chair to make such a ruling.

This is separate and apart from whether he or I agree with the material which was proposed to be added. By the way, for whatever relevance it has, I think probably both of us would be inclined to support the material which was intended to be added if it ever came to a floor hearing. But the way I don't want to commit myself to that position because I haven't seen the actual material proposed to be added, but what I know of the subject matter, it would be the type of change in our law which I probably would support and, without speaking for Senator WARNER, I think he is probably inclined to support, too. That is not the issue. We can't treat our colleagues that way. That is a controversial matter which is proposed to be added. There is a very strong debate over the subject matter.

Regardless of what our position is, as the chairman and ranking member of this committee, we cannot bring back from the conference a document which contains material which had never been discussed in conference, never the subject of debate in either the House or the Senate, was not in the House or the Senate bill, and is totally nongermane to the subject matter of the conference report.

We all know there are items added to conference reports that were not in either bill. That happens. But under our rule, the only way it now happens is if it is material to which everybody agrees. It cannot be material which is not in agreement by the Members of the two bodies. We cannot possibly, as a matter of principle, have a process where a conference report comes back containing material not germane, not relevant, not material to the conference, not the subject of either bill that passed either House, and which is added after the signature sheets have been signed.

I wanted to come to the Chamber and say what has happened because we heard this effort was being considered—just being considered—by the House Republican leadership. Senator WARNER and I asked our staff to go over this conference report and retrieve our signature sheets.

Mr. REID. Will the Senator yield for a question?

Mr. LEVIN. I will be happy to yield.

Mr. REID. Through the Chair to the distinguished ranking member of the Armed Services Committee, I already gave some remarks on the Senate floor last night about my admiration for the Chairman of the Armed Services Committee. My admiration of the senior Senator from Virginia is a volume. I think JOHN WARNER is what a Senator is all about, and I said that last night.

I say to my friend from Michigan, I have served in legislative bodies a long time. I have been in public service for more than 40 years. And my respect for the ranking member of the Armed Services Committee is equal to that of the senior Senator from Virginia. There is no better Senator than JOHN WARNER from Michigan—not today or ever. He is one of the best ever.

The working relationship between Senator WARNER and Senator LEVIN is what the Senate should be. But I want to say that what is going on in this Congress is absolutely untoward. We have a Defense appropriations bill that will fund the military, some $450 billion, that is being held up by sticking out that bill drilling for oil in Alaska, drilling oil wells in Alaska.

There is a place for that legislation, but it should not hold up this bill, as it has been. As Lord Acton said, "Power tends to corrupt, and absolute power tends to corrupt, absolutely." What is what we have a study of in here: The absolute power of the Republicans controlling the White House, the House, and the Senate is leading to a corrupt Congress.

I think that the rules mean nothing, throw them aside, let us change them today, we are going to put something on the Defense appropriations