was unsuccessful in its attempt today to override that veto. Consequently, I am further revising the 2008 budget resolution and reversing the adjustments previously made pursuant to section 301 to the aggregates and the allocation provided to the Senate Finance Committee.

I ask unanimous consent that the following revisions to S. Con. Res. 21 be printed in the RECORD.

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

CONCURRENT RESOLUTION ON THE BUDGET FOR FISCAL YEAR 2008—S. CON. RES. 21; FURTHER REVISIONS TO THE CONFERENCE AGREEMENT PURSUANT TO SECTION 301 DEFICIT-NEUTRAL RESERVE FUND FOR SCHIP LEGISLATION

[In billions of dollars]

Section 101	
(1)(A) Federal Revenues:	
FY 2007	1,900.340
FY 2008	2,019.643
FY 2009	2,114.585
FY 2010	2,169.124
FY 2011	2,350.432
FY 2012	2,493.503
(1)(B) Change in Federal Revenues:	
FY 2007	−4.366
FY 2008	−31.153
FY 2009	7.659
FY 2010	5.403
FY 2011	−44.118
FY 2012	−103.593
(2) New Budget Authority:	
FY 2007	2,371.470
FY 2008	2,503.226
FY 2009	2,520.727
FY 2010	2,572.750
FY 2011	2,685.528
FY 2012	2,722.688
(3) Budget Outlays:	
FY 2007	2,294.862
FY 2008	2,474.039
FY 2009	2,569.248
FY 2010	2,601.736
FY 2011	2,692.419
FY 2012	2,704.415

CONCURRENT RESOLUTION ON THE BUDGET FOR FISCAL YEAR 2008—S. CON. RES. 21; FURTHER REVISIONS TO THE CONFERENCE AGREEMENT PURSUANT TO SECTION 301 DEFICIT-NEUTRAL RESERVE FUND FOR SCHIP LEGISLATION

[In millions of dollars]

Current Allocation to Senate Finance Committee:	
FY 2007 Budget Authority	1,011,527
FY 2007 Outlays	1,017,808
FY 2008 Budget Authority	1,091,702
FY 2008 Outlays	1,086,944
FY 2008–2012 Budget Authority	6,067,019
FY 2008–2012 Outlays	6,057,014
Adjustments:	
FY 2007 Budget Authority	0
FY 2007 Outlays	0
FY 2008 Budget Authority	−9,332
FY 2008 Outlays	−2,386
FY 2008–2012 Budget Authority	−49,711
FY 2008–2012 Outlays	−35,384
Revised Allocation to Senate Finance Committee:	
FY 2007 Budget Authority	1,011,527
FY 2007 Outlays	1,017,808
FY 2008 Budget Authority	1,082,370
FY 2008 Outlays	1,084,558
FY 2008–2012 Budget Authority	6,017,308
FY 2008–2012 Outlays	6,021,630

LETTER TO THE U.N.

Mr. SPECTER. I ask unanimous consent that the attached letter to the Honorable Ban Ki-Moon, Secretary-General of the United Nations, dated January 17, 2008, be printed in the RECORD.

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

U.S. SENATE,
Washington, DC, January 17, 2008.

Hon. BAN KI-MOON,
Secretary-General of the United Nations,
United Nations Headquarters, New York, NY.

DEAR SECRETARY-GENERAL: By letter dated January 2, 2008, I requested that the United Nations initiate an investigation into the assassination of former Pakistani Prime Minister Benazir Bhutto. With this letter, I am enclosing for you a copy of that letter and would appreciate a response.

After considering the matter further and watching developments, it is my view that the United Nations should organize a standing commission to investigate assassinations which would have international importance. We are seeing terrorism, supplemented by assassinations, becoming commonplace to achieve political objectives.

While a United Nations investigation into the assassination of former Prime Minister Bhutto is still something that should be done, it would obviously have been much better to have had a unit in existence which could be immediately dispatched to the scene to investigate the locale as soon as possible and to interrogate witnesses while their memories are fresh and before others might try to stop them from talking.

I would very much appreciate your response on these important matters.

Sincerely,

ARLEN SPECTER.

STATE SECRETS PROTECTION ACT

Mr. KENNEDY. Mr. President, yesterday, Senator SPECTER and I introduced the State Secrets Protection Act. I have been working on this bill with Senator SPECTER for several months, and I thank him for his commitment and leadership on this very important issue. I hope that our collaboration on this legislation will demonstrate that even the most sensitive problems can be addressed through bipartisan cooperation if we keep the interests of the Nation front-and-center and roll up our sleeves to do the work of seeking a realistic and workable solution. The State Secrets Protection Act is an essential response to a pressing need.

For years, there has been growing concern about the state secrets privilege. It is a common law privilege that lets the Government protect sensitive national security information from being disclosed as evidence in litigation. The problem is that sometimes plaintiffs may need that information to show that their rights were violated. If the privilege is not applied carefully, the Government can use it as a tool for cover up by withholding evidence that is not actually sensitive. The state secrets privilege is important, but there is a risk it will be overused and abused.

The privilege was first recognized by the Supreme Court in 1953, and it has been asserted since then by every administration, Republican and Democratic. Under the Bush administration, however, use of the state secrets privilege has dramatically increased and the harmful consequences of its irregular application by courts have become painfully clear.

Injured plaintiffs have been denied justice, courts have failed to address fundamental questions of constitutional rights and separation of powers, and confusion pervades this area of law. The Senate debate on reforming the Foreign Intelligence Surveillance Act has become far more difficult than it ought to be because many believe that if courts hear lawsuits against telecommunications companies, the courts will be unable to deal fairly and effectively with the Government's invocation of the privilege.

Studies show that the Bush administration has raised the privilege in over 25 percent more cases per year than previous administrations and has sought dismissal in over 90 percent more cases. As one scholar recently noted, this administration has used the privilege to ''seek blanket dismissal of every case challenging the constitutionality of specific, ongoing government programs'' related to its war on terrorism, and as a result, the privilege is impairing the ability of Congress and the judiciary to perform their constitutional duty to check executive power.

Another leading scholar recently found that ''in practical terms, the state secrets privilege never fails.'' Like other commentators, he concluded that ''the state secrets privilege is the most powerful secrecy privilege available to the president,'' and ''the people of the United States have suffered needlessly because the law is now a servant to executive claims of national security.''

In 1980, Congress enacted the Classified Information Procedures Act—known as CIPA—to provide Federal courts with clear statutory guidance on handling secret evidence in criminal cases. For almost 30 years, courts have effectively applied that law to make criminal trials fairer and safer. During that period, Congress has also regulated judicial review of national security materials under the Foreign Intelligence Surveillance Act and the Freedom of Information Act. Because of these laws, Federal judges regularly review and handle highly classified evidence in many types of cases.

Yet, in civil cases, litigants have been left behind. Congress has failed to provide clear rules or standards for determining whether evidence is protected by the state secrets privilege. We have failed to develop procedures that will protect injured parties and also prevent the disclosure of sensitive information. Because use of the state secrets privilege has escalated in recent years, there is an increasing need for the judiciary and the executive to have clear, fair, and safe rules.

Many have recognized the need for congressional guidance on this issue. The American Bar Association recently issued a report ''urg[ing] Congress to enact legislation governing Federal

civil cases implicating the state secrets privilege.'' The bipartisan Constitution Project found that ''legislative action [on the privilege] is essential to restore and strengthen the basic rights and liberties provided by our constitutional system of government.'' Leading constitutional scholars sent a letter to Congress emphasizing that there ''is a need for new rules designed to protect the system of checks and balances, individual rights, national security, fairness in the courtroom, and the adversary process.''

The State Secrets Protection Act we are introducing responds to this need by creating a civil version of CIPA. The act provides guidance to the Federal courts in handling assertions of the privilege in civil cases, and it restores checks and balances to this crucial area of law by placing constraints on the application of state secrets doctrine. The act will strengthen our national security by requiring judges to protect all state secrets from disclosure, and it will strengthen the rule of law by preventing misuse of the privilege and enabling more litigants to achieve justice in court.

Recognizing that state secrets must be protected, the Act enables the executive branch to avoid publicly revealing evidence if doing so might disclose a state secret. If a court finds that an item of evidence contains a state secret, or cannot be effectively separated from other evidence that contains a state secret, then the evidence is privileged and may not be released for any reason. Secure judicial proceedings and other safeguards that have proven effective under CIPA and the Freedom of Information Act will ensure that the litigation does not reveal sensitive information.

At the same time, the State Secrets Protection Act will prevent the executive branch from using the privilege to deny parties their day in court or shield illegal activity that is not actually sensitive. A recently declassified report shows that the executive branch abused the state secrets privilege in the very Supreme Court case, United States v. Reynolds (1953), that serves as the basis for the privilege today. In Reynolds, an accident report was kept out of court due to the government's claim that it would disclose state secrets. The court never even looked at the report. Now that the report has been made public, we've learned that in fact it contained no state secrets whatever but it did contain embarrassing information revealing government negligence.

In recent years, Federal courts have applied the Reynolds precedent to dismiss numerous cases—on issues ranging from torture, to extraordinary rendition, to warrantless wiretapping—without ever reviewing the evidence. Some courts have even upheld the executive's claims of state secrets when the purported secrets were publicly available, as in the case of El-Masri v. Tenet. In that case, there was extensive evidence in the public record that the plaintiff was kidnapped and tortured by the CIA on the basis of mistaken identity, but the court simply accepted at face value the Government's claim that litigation would require disclosure of state secrets. The court dismissed Mr. El-Masri's case without even evaluating the evidence or considering whether the case could be litigated on other evidence.

When Federal courts accept the executive branch's state secrets claims as absolute, our system of checks and balances breaks down. By refusing to consider key pieces of evidence, or by dismissing lawsuits outright without considering any evidence at all, courts give the executive branch the ability to violate American laws and constitutional rights without any accountability or oversight, and innocent victims are left unable to obtain justice. The kind of abuse that occurred in Reynolds will no longer be possible under the State Secrets Protection Act.

The act requires courts to examine the evidence for which the privilege is claimed, in order to determine whether the executive branch has validly invoked the privilege. The court must look at the actual evidence, not just Government affidavits about the evidence, and make its own assessment of whether information is covered by the privilege. Only after a court has considered the evidence and found that it provides a valid legal defense can it dismiss a claim on state secrets grounds.

The act also gives parties an opportunity to make a preliminary case with their own evidence, and it allows courts to develop solutions to let lawsuits proceed, such as by directing the Government to produce unclassified substitutes for secret evidence. Many of these powers are already available to courts, but they often go unused. In addition, the act draws on CIPA to include provisions for congressional reporting that will ensure an additional layer of oversight.

I am pleased that the senior Senator from Pennsylvania and I have been able to work together to produce this bill. We expect to have a hearing soon on the state secrets privilege in the Judiciary Committee under the leadership of Chairman LEAHY, who is a cosponsor of the bill and a strong supporter of state secrets reform. I look forward to a full airing of the issues and the important feedback that will come from the committee's thoughtful consideration of the legislation.

In particular, as the bill moves forward, we intend to continue to explore the possibilities for providing relief to plaintiffs who have a winning case but cannot get a trial because every piece of evidence they need is privileged. This is an extremely difficult subject, which Congress should address if we can find a fair way to do so that will also protect legitimate secrets. We will also explore other measures to make the bill stronger, such as providing expedited security clearance reviews for attorneys.

Under the State Secrets Protection Act, the Nation will be able to preserve its commitment to individual rights and the rule of law, without compromising its national defense or foreign policy. Congress has clear constitutional authority to regulate the rules of procedure and evidence for the Federal courts, and it is long past time for us to exercise this authority on such an important issue. I urge my colleagues in the Senate to pass this needed legislation as soon as possible.

Mr. SPECTER. Mr. President, I wish to discuss the State Secrets Protection Act of 2008. Senator KENNEDY and I are introducing this bipartisan bill in order to harmonize the law applicable in cases involving the executive branch's invocation of the privilege. This bill is timely for several reasons. First, the use of the privilege appears to be on the rise in the post-September 11, 2001, era, which has generated new public attention and concern about its legitimacy. Second, there is some disparity among the district and appellate court opinions analyzing the privilege, particularly as to the question of whether courts must independently review the allegedly privileged evidence. Finally, a codified test for evaluating state secrets that requires courts to review the evidence in camera—a Latin phrase meaning ''in the judge's private chambers''—will help to reassure the public that the claims are neither spurious nor intended to cover up alleged Government misconduct. With greater checks and balances and greater accountability, there is a commensurate increase in public confidence in our institutions of Government.

In view of its increasing use, inconsistent application, and public criticism, we think the time is ripe to pass legislation codifying standards on the state secrets privilege. Our bill builds upon proposals by the American Bar Association and legal scholars who have called upon Congress to legislate in this area.

Mr. President, I begin my remarks by discussing some of the historical and more recent applications of the state secrets doctrine—which have run the gamut from cases involving military aviation technology to CIA sources and methods, to extraordinary rendition and the terrorist surveillance program, or TSP.

In the 1876 case *Totten* v. *United States*, 92 U.S. 105, 1876, the Supreme Court acknowledged a privilege that barred claims between the Government and its covert agents ''in all secret employments of the government in time of war, or upon matters affecting our foreign relations, where a disclosure of the service might compromise or embarrass our government in its public duties, or endanger the person or injure the character of the agent.'' The Totten case involved a purported Civil War spy who sought to sue President

Lincoln to enforce an alleged espionage agreement. In 2005, the Court reaffirmed the holding in Totten that ''lawsuits premised on alleged espionage agreements are altogether forbidden.'' *Tenet* v. *Doe*, 544 U.S. 1, 2005.

Notwithstanding Totten, the modern state secrets privilege was first recognized by the Supreme Court in the 1953 case of *United States* v. *Reynolds*, 345 U.S. 1, 1953. Reynolds involved the Government's assertion of the military secrets privilege for an accident report discussing the crash of a B–29 bomber, which killed three civilian engineers along with six military personnel. In Reynolds, the Supreme Court set out several rules pertinent to the assertion and consideration of the state secrets privilege. For example, the Court said the privilege belongs to the Government. It can be neither claimed nor waived by a third party. The Court also held that the privilege must be asserted ''in a formal claim of privilege lodged by the head of the department which has control over the matter, after actual consideration by that officer.'' Further, ''the showing of necessity which is made will determine how far the court should probe in satisfying itself that the occasion for invoking the privilege is appropriate.'' Significantly, however, the Supreme Court held that the material in question need not necessarily be disclosed to the reviewing judge. On this point, the Reynolds Court said:

> Judicial control over the evidence in a case cannot be abdicated to the caprice of executive officers. Yet we will not go so far as to say that the court may automatically require a complete disclosure to the judge before the claim of privilege will be accepted in any case. It may be possible to satisfy the court, from all the circumstances of the case, that there is a reasonable danger that compulsion of the evidence will expose military matters which, in the interest of national security, should not be divulged. When this is the case, the occasion for the privilege is appropriate, and the court should not jeopardize the security which the privilege is meant to protect by insisting upon an examination of the evidence, even by the judge alone, in chambers.

Unfortunately, this limitation on judicial review ultimately led to further litigation and public skepticism when the accident report from the Reynolds case was later declassified—a result the State Secrets Protection Act seeks to avoid in future cases.

In 2003, after the documents at issue in Reynolds were declassified, one of the original plaintiffs and heirs of the others brought suit alleging that the Government had committed a ''fraud upon the court.'' I cite *Herring* v. *United States*, 424 F.3d 384 (3d Cir. 2005), cert. denied by *Herring* v. *United States*, 547 U.S. 1123, May 1, 2006. They claimed the Government had asserted the military secrets privilege for documents that did not reveal anything sensitive simply to conceal the Government's own negligence. Nevertheless, both the district court and the Third Circuit declined to reopen the case after finding that the plaintiffs could not meet the high burden for proving a claim of fraud on the court. The Third Circuit wrote:

> We further conclude that a determination of fraud on the court may be justified only by ''the most egregious misconduct directed to the court itself,'' and that it ''must be supported by clear, unequivocal and convincing evidence.'' The claim of privilege by the United States Air Force in this case can reasonably be interpreted to include within its scope information about the workings of the B–29, and therefore does not meet the demanding standard for fraud upon the court.

I cite Herring, 386–387. This ruling, however, did not end public debate on the matter. As recently as last October, the New York Times editorialized: ''[T]he Reynolds case itself is an object lesson in why courts need to apply a healthy degree of skepticism to state secrets claims. . . . When the documents finally became public just a few years ago, it became clear that the government had lied. The papers contained information embarrassing to the government but nothing to warrant top secret treatment or denying American citizens honest adjudication of their lawsuit.''

Upon learning of the Herring case, which was filed in Philadelphia, it became clear to me that codifying provisions for a court to use in ruling on state secrets cases was desirable for a number of reasons—including the added legitimacy of having a judge evaluate the validity of the claim. I think that by requiring in camera court review, we will ultimately provide parties with greater trust in the integrity of the claim and, importantly, appropriate closure.

The benefits of court review are illustrated by recent events in the Ninth Circuit. On November 16, 2007, the Ninth Circuit decided *Al-Haramain Islamic Foundation, Inc.* v. *Bush*, 507 F.3d 1190 (9th Cir. (Ca.) 2007), a case in which the plaintiffs challenged alleged surveillance of their organization under the terrorist surveillance program, TSP. The case stands out in TSP jurisprudence because the plaintiff alleged the Government had unwittingly provided proof that it was surveilling the plaintiff by inadvertently disclosing a partial transcript of phone conversations. The district court denied the Government's motion to dismiss on grounds of the state secrets privilege, but the Ninth Circuit reversed. Citing Totten and Reynolds, the Al-Haramain court acknowledged that when the very subject matter of the lawsuit is a state secret, dismissal without evaluating the claim might be appropriate. However, given all of the public disclosures concerning the TSP, the Al-Haramain court held that the subject matter of the lawsuit was not itself a state secret. Instead, the court concluded that it ''must make an independent determination whether the information is privileged.'' This is 507 F.3d at 1202. It did so by undertaking a full review of the privileged documents in camera. The Al-Haramain court described its review of the sealed document at issue and the balancing test it imposed:

> Having reviewed it in camera, we conclude that the Sealed Document is protected by the state secrets privilege, along with the information as to whether the government surveilled Al-Haramain. We take very seriously our obligation to review the documents with a very careful, indeed a skeptical, eye, and not to accept at face value the government's claim or justification of privilege. Simply saying ''military secret,'' ''national security'' or ''terrorist threat'' or invoking an ethereal fear that disclosure will threaten our nation is insufficient to support the privilege. Sufficient detail must be—and has been—provided for us to make a meaningful examination. The process of in camera review ineluctably places the court in a role that runs contrary to our fundamental principle of a transparent judicial system. It also places on the court a special burden to assure itself that an appropriate balance is struck between protecting national security matters and preserving an open court system. That said, we acknowledge the need to defer to the Executive on matters of foreign policy and national security and surely cannot legitimately find ourselves second guessing the Executive in this arena.

I cite 507 F.3d at 1203

The State Secrets Protection Act essentially codifies the Al-Haramain test by requiring courts to evaluate the assertion of a state secrets privilege in light of an in camera review of the allegedly privileged documents. I think it is highly advisable to codify both the means of asserting the privilege and the method for reviewing courts to go about resolving claims of privilege because the state secrets privilege is being asserted more frequently and the resulting decisions will benefit from more consistent procedures. Indeed, one recent study indicates that, of the approximately 89 state secrets cases adjudicated since the Supreme Court's decision in Reynolds, courts have declined to review any evidence in at least 16 cases. It is unclear whether the courts reviewed any evidence in another 16 cases, so the number could be as high as 32, or more than a third of the total. The current bill would end this practice.

Reliable statistics on the use of the state secrets privilege are somewhat difficult to come by because not all cases are reported. The Reporters' Committee for Freedom of the Press claims that, ''while the government asserted the privilege approximately 55 times in total between 1954 . . . and 2001, [the government] asserted it 23 times in the four years after Sept. 11.'' With the use of the privilege apparently on the rise, the risk of abuse also grows. As I have noted, critics argue that the Government has abused the privilege to cover up cases of malfeasance and illegal activity. They point to the aftermath of Reynolds and more recently to the case of Khaled El-Masri, whose claim that the was subject to extraordinary rendition was dismissed following the Government's successful assertion of the state secrets privilege at the district and appellate court levels. This is *El-Masri* v. *United States*, 479 F.3d 296 (4th Cir. (Va.) March 2, 2007), cert. denied, 128 S.Ct. 373 (October 9, 2007). Although the Supreme

Court declined to revisit the state secrets doctrine in the El-Masri case, there is ample cause for congressional action—both to protect legitimate secrets and ensure public confidence in the process for adjudicating such privilege claims.

The State Secrets Protection Act establishes a clear standard for application of the state secrets privilege and creates procedures for reviewing courts to follow in evaluating privilege claims. Specifically, the Kennedy-Specter State Secrets Protection Act:

Defines state secrets and codifies the standard for evaluating privilege claims: The bill defines ''state secret'' as ''any information that, if disclosed publicly, would be reasonably likely to cause significant harm to the national defense or foreign relations of the United States.'' It requires Federal courts to decide cases after ''consideration of the interests of justice and national security.''

Requires court examination of evidence subject to privilege claims: The legislation requires courts to evaluate the privilege by reviewing pertinent evidence in camera. By statutorily empowering courts to review the evidence, the bill will substantially mitigate the risk of future allegations that the Government committed ''fraud upon the court,'' as asserted by the Reynolds plaintiffs 50 years after the landmark decision.

Closes hearings on the privilege—except those involving mere legal questions: Under the legislation, hearings are presumptively held in camera but only ex parte if the court so orders.

Requires attorney security clearances: Under the bill, courts must limit participation in hearings to evaluate state secrets to attorneys with appropriate clearances. Moreover, it allows for appointment of guardians ad litem with clearances to represent parties who are absent from proceedings.

Permits the Government to produce a nonprivileged substitute: Consistent with the Classified Information Procedures Act, the bill allows for the use of nonprivileged substitutes, where possible. If the court orders the Government to provide a nonprivileged substitute and the Government declines to provide it, the court resolves fact questions involving the evidence at issue against the Government.

Protects evidence: The proposed bill incorporates the security procedures established in the Classified Information Procedures Act and permits the Chief Justice to create additional rules to safeguard state secrets evidence.

I commend the bill to all of my Senate colleagues.

HONORING MARTIN P. PAONE

Mr. FEINGOLD. Mr. President, today I wish to honor our distinguished Secretary of the Majority, Martin Paone, who announced recently his plans to leave the Senate after almost 30 years of exemplary service. During his career in the Senate, Marty has helped to guide this body as it has addressed some of the most pressing issues, and faced some of the most difficult challenges, in our Nation's history.

Marty began his career in the Congress, working in the House Post Office and the Senate Parking Office. From there, he quickly rose through the ranks to become an assistant in the Democratic cloakroom in 1979. After demonstrating his keen understanding of floor procedures, he became a member of the floor staff for the Democratic Policy Committee and later assistant secretary of the majority. In 1995, he was elected as secretary of the minority, and continued to serve in that role, and later as the secretary of the majority, for the Democratic caucus.

As we all know, the procedures of the Senate are complicated, and at times perplexing. Indeed, Americans watching us from home may wonder how we are able get our important legislative work done. Well, one of the principal reasons is that Republican and Democratic Senators alike have been able to rely on Marty's counsel when it comes to questions about the rules of the Senate. Marty possesses a vast and detailed knowledge of the history and procedures of the Senate that is possibly second only to that of our distinguished President Pro Tempore, Senator ROBERT C. BYRD. And he has a well-deserved reputation as a straight shooter. Whenever I have approached Marty with a question during my time as a Senator, I have always been able to count on him for a straight answer—even when my position may have run counter to that of my leadership.

Throughout his tenure in the Senate, Marty has also served as a steady hand, helping this Chamber through changes in our country's leadership and critical events in our Nation's history. Marty's career has been marked by five different Presidents, five Republican Senate leaders and four Democratic Senate leaders. Marty has also served during several key historic moments, from the end of the Cold War to the tragic events of September 11, 2001. It was after September 11 that Marty's extensive experience and understanding became especially important as he helped guide this body during an extremely difficult and uncertain time. That service to the Senate, and to the country, was invaluable, and I will always remember it.

I wish Marty, his wife Ruby, and their three children, Alexander, Stephanie, and T.J., all the best as Marty begins this new chapter in his life. He will be greatly missed, but he leaves behind a lasting impact that will help guide this body for years to come.

OPEN GOVERNMENT ACT

Mr. LEAHY. Mr. President, as we start a new year—and the Senate starts a new session—the American people have a new law that honors and protects their right to know. I am pleased that during the waning hours of 2007, the President signed the Leahy-Cornyn Openness Promotes Effectiveness in our National Government Act, the ''OPEN Government Act,'' S. 2488, into law—enacting the first major reforms to the Freedom of Information Act, ''FOIA'' in more than a decade.

Today, our Government is more open and accountable to the American people than it was just a year ago. With the enactment of FOIA reform legislation, the Congress has demanded and won more openness and accountability regarding the activities of the executive branch. I call on the President to vigorously and faithfully execute the OPEN Government Act, and I hope that he will fully enforce this legislation.

Sadly, the early signs from the administration are troubling. Just this week, the administration signaled that it will move the much-needed funding for the Office of Government Information Services created under the OPEN Government Act from the National Archives and Records Administration to the Department of Justice. Such a move is not only contrary to the express intent of the Congress, but it is also contrary to the very purpose of this legislation—to ensure the timely and fair resolution of American's FOIA requests. Given its abysmal record on FOIA compliance during the last 7 years, I hope that the administration will reconsider this unsound decision and enforce this law as the Congress intended.

In addition, for the first time ever under the new law implementing the recommendations of the 9/11 Commission, Federal agencies will be required to fully disclose to Congress their use of data mining technology to monitor the activities of ordinary American citizens. I am pleased that this law contains the reforms that I cosponsored last year to require data mining reporting and to strengthen the Privacy and Civil Liberties Oversight Board.

Surely all of these OPEN Government reforms are cause to celebrate. But there is much more work to be done.

During the second session of the 110th Congress, I intend to work hard to build upon these OPEN Government successes, so that we have a government that is more open and accountable to all Americans. As chairman of the Judiciary Committee, I have made oversight of the FOIA reforms contained in the OPEN Government Act one of my top priorities. I will also continue to work closely with Members on both sides of the aisle and in both Chambers to address the growing and troubling use of FOIA (b)(3) exemptions to withhold information from the American people.

As the son of a Vermont printer, I understand the great value of documenting and preserving our Nation's rich history for future generations, so that our democracy remains open and