the gentleman from Wisconsin (Mr. SENSENBRENNER) that the House suspend the rules and pass the bill, H.R. 5418, as amended.

The question was taken; and (two-thirds having voted in favor thereof) the rules were suspended and the bill, as amended, was passed.

A motion to reconsider was laid on the table.

ELECTRONIC SURVEILLANCE MODERNIZATION ACT

Mr. SENSENBRENNER. Mr. Speaker, pursuant to House Resolution 1052, I call up the bill (H.R. 5825) to update the Foreign Intelligence Surveillance Act of 1978, and ask for its immediate consideration.

The Clerk read the title of the bill.

The SPEAKER pro tempore. Pursuant to House Resolution 1052, in lieu of the amendments recommended by the Committee on the Judiciary and the Permanent Select Committee on Intelligence printed in the bill, the amendment in the nature of a substituted printed in House Report 109–696 is adopted, and the bill, as amended, is considered read.

The text of the bill, as amended, is as follows:

SECTION 1. SHORT TITLE.

This Act may be cited as the ''Electronic Surveillance Modernization Act''.

SEC. 2. FISA DEFINITIONS.

(a) AGENT OF A FOREIGN POWER.—Subsection (b)(1) of section 101 of the Foreign Intelligence Surveillance Act of 1978 (50 U.S.C. 1801) is amended—

(1) in subparagraph (B), by striking ''; or'' and inserting '';''; and

(2) by adding at the end the following:

''(D) is reasonably expected to possess, control, transmit, or receive foreign intelligence information while such person is in the United States, provided that the official making the certification required by section 104(a)(7) deems such foreign intelligence information to be significant; or''.

(b) ELECTRONIC SURVEILLANCE.—Subsection (f) of such section is amended to read as follows:

''(f) 'Electronic surveillance' means—

''(1) the installation or use of an electronic, mechanical, or other surveillance device for acquiring information by intentionally directing surveillance at a particular known person who is reasonably believed to be in the United States under circumstances in which that person has a reasonable expectation of privacy and a warrant would be required for law enforcement purposes; or

''(2) the intentional acquisition of the contents of any communication under circumstances in which a person has a reasonable expectation of privacy and a warrant would be required for law enforcement purposes, if both the sender and all intended recipients are reasonably believed to be located within the United States.''.

(c) MINIMIZATION PROCEDURES.—Subsection (h) of such section is amended—

(1) in paragraph (2), by striking ''importance;'' and inserting ''importance; and'';

(2) in paragraph (3), by striking ''; and'' and inserting ''.''; and

(3) by striking paragraph (4).

(d) WIRE COMMUNICATION AND SURVEILLANCE DEVICE.—Subsection (l) of such section is amended to read as follows:

''(l) 'Surveillance device' is a device that allows surveillance by the Federal Government, but excludes any device that extracts or analyzes information from data that has already been acquired by the Federal Government by lawful means.''.

(e) CONTENTS.—Subsection (n) of such section is amended to read as follows:

''(n) 'Contents', when used with respect to a communication, includes any information concerning the substance, purport, or meaning of that communication.''.

SEC. 3. AUTHORIZATION FOR ELECTRONIC SURVEILLANCE AND OTHER ACQUISITIONS FOR FOREIGN INTELLIGENCE PURPOSES.

(a) IN GENERAL.—The Foreign Intelligence Surveillance Act of 1978 (50 U.S.C. 1801 et seq.) is further amended by striking section 102 and inserting the following:

''AUTHORIZATION FOR ELECTRONIC SURVEILLANCE FOR FOREIGN INTELLIGENCE PURPOSES

''SEC. 102. (a) IN GENERAL.—Notwithstanding any other law, the President, acting through the Attorney General, may authorize electronic surveillance without a court order under this title to acquire foreign intelligence information for periods of up to one year if the Attorney General certifies in writing under oath that—

''(1) the electronic surveillance is directed at—

''(A) the acquisition of the contents of communications of foreign powers, as defined in paragraph (1), (2), or (3) of section 101(a), or an agent of a foreign power, as defined in subparagraph (A) or (B) of section 101(b)(1); or

''(B) the acquisition of technical intelligence, other than the spoken communications of individuals, from property or premises under the open and exclusive control of a foreign power, as defined in paragraph (1), (2), or (3) of section 101(a); and

''(2) the proposed minimization procedures with respect to such surveillance meet the definition of minimization procedures under section 101(h);

if the Attorney General reports such minimization procedures and any changes thereto to the Permanent Select Committee on Intelligence of the House of Representatives and the Select Committee on Intelligence of the Senate at least 30 days prior to the effective date of such minimization procedures, unless the Attorney General determines immediate action is required and notifies the committees immediately of such minimization procedures and the reason for their becoming effective immediately.

''(b) MINIMIZATION PROCEDURES.—An electronic surveillance authorized by this subsection may be conducted only in accordance with the Attorney General's certification and the minimization procedures. The Attorney General shall assess compliance with such procedures and shall report such assessments to the Permanent Select Committee on Intelligence of the House of Representatives and the Select Committee on Intelligence of the Senate under the provisions of section 108(a).

''(c) SUBMISSION OF CERTIFICATION.—The Attorney General shall immediately transmit under seal to the court established under section 103(a) a copy of his certification. Such certification shall be maintained under security measures established by the Chief Justice with the concurrence of the Attorney General, in consultation with the Director of National Intelligence, and shall remain sealed unless—

''(1) an application for a court order with respect to the surveillance is made under section 104; or

''(2) the certification is necessary to determine the legality of the surveillance under section 106(f).

''AUTHORIZATION FOR ACQUISITION OF FOREIGN INTELLIGENCE INFORMATION

''SEC. 102A. (a) IN GENERAL.—Notwithstanding any other law, the President, acting through the Attorney General may, for periods of up to one year, authorize the acquisition of foreign intelligence information concerning a person reasonably believed to be outside the United States if the Attorney General certifies in writing under oath that—

''(1) the acquisition does not constitute electronic surveillance;

''(2) the acquisition involves obtaining the foreign intelligence information from or with the assistance of a wire or electronic communications service provider, custodian, or other person (including any officer, employee, agent, or other specified person of such service provider, custodian, or other person) who has access to wire or electronic communications, either as they are transmitted or while they are stored, or equipment that is being or may be used to transmit or store such communications;

''(3) a significant purpose of the acquisition is to obtain foreign intelligence information; and

''(4) the proposed minimization procedures with respect to such acquisition activity meet the definition of minimization procedures under section 101(h).

''(b) SPECIFIC PLACE NOT REQUIRED.—A certification under subsection (a) is not required to identify the specific facilities, places, premises, or property at which the acquisition of foreign intelligence information will be directed.

''(c) SUBMISSION OF CERTIFICATION.—The Attorney General shall immediately transmit under seal to the court established under section 103(a) a copy of a certification made under subsection (a). Such certification shall be maintained under security measures established by the Chief Justice of the United States and the Attorney General, in consultation with the Director of National Intelligence, and shall remain sealed unless the certification is necessary to determine the legality of the acquisition under section 102B.

''(d) MINIMIZATION PROCEDURES.—An acquisition under this section may be conducted only in accordance with the certification of the Attorney General and the minimization procedures adopted by the Attorney General. The Attorney General shall assess compliance with such procedures and shall report such assessments to the Permanent Select Committee on Intelligence of the House of Representatives and the Select Committee on Intelligence of the Senate under section 108(a).

''DIRECTIVES RELATING TO ELECTRONIC SURVEILLANCE AND OTHER ACQUISITIONS OF FOREIGN INTELLIGENCE INFORMATION

''SEC. 102B. (a) DIRECTIVE.—With respect to an authorization of electronic surveillance under section 102 or an authorization of an acquisition under section 102A, the Attorney General may direct a person to—

''(1) immediately provide the Government with all information, facilities, and assistance necessary to accomplish the acquisition of foreign intelligence information in such a

manner as will protect the secrecy of the electronic surveillance or acquisition and produce a minimum of interference with the services that such person is providing to the target; and

''(2) maintain under security procedures approved by the Attorney General and the Director of National Intelligence any records concerning the electronic surveillance or acquisition or the aid furnished that such person wishes to maintain.

''(b) COMPENSATION.—The Government shall compensate, at the prevailing rate, a person for providing information, facilities, or assistance pursuant to subsection (a).

''(c) FAILURE TO COMPLY.—In the case of a failure to comply with a directive issued pursuant to subsection (a), the Attorney General may petition the court established under section 103(a) to compel compliance with the directive. The court shall issue an order requiring the person or entity to comply with the directive if it finds that the directive was issued in accordance with section 102(a) or 102A(a) and is otherwise lawful. Failure to obey an order of the court may be punished by the court as contempt of court. Any process under this section may be served in any judicial district in which the person or entity may be found.

''(d) REVIEW OF PETITIONS.—(1) IN GENERAL.—(A) CHALLENGE.—A person receiving a directive issued pursuant to subsection (a) may challenge the legality of that directive by filing a petition with the pool established under section 103(e)(1).

''(B) ASSIGNMENT OF JUDGE.—The presiding judge designated pursuant to section 103(b) shall assign a petition filed under subparagraph (A) to one of the judges serving in the pool established by section 103(e)(1). Not later than 24 hours after the assignment of such petition, the assigned judge shall conduct an initial review of the directive. If the assigned judge determines that the petition is frivolous, the assigned judge shall deny the petition and affirm the directive or any part of the directive that is the subject of the petition. If the assigned judge determines the petition is not frivolous, the assigned judge shall, within 72 hours, consider the petition in accordance with the procedures established under section 103(e)(2) and provide a written statement for the record of the reasons for any determination under this subsection.

''(2) STANDARD OF REVIEW.—A judge considering a petition to modify or set aside a directive may grant such petition only if the judge finds that such directive does not meet the requirements of this section or is otherwise unlawful. If the judge does not modify or set aside the directive, the judge shall affirm such directive, and order the recipient to comply with such directive.

''(3) DIRECTIVES NOT MODIFIED.—Any directive not explicitly modified or set aside under this subsection shall remain in full effect.

''(e) APPEALS.—The Government or a person receiving a directive reviewed pursuant to subsection (d) may file a petition with the court of review established under section 103(b) for review of the decision issued pursuant to subsection (d) not later than 7 days after the issuance of such decision. Such court of review shall have jurisdiction to consider such petitions and shall provide for the record a written statement of the reasons for its decision. On petition by the Government or any person receiving such directive for a writ of certiorari, the record shall be transmitted under seal to the Supreme Court, which shall have jurisdiction to review such decision.

''(f) PROCEEDINGS.—Judicial proceedings under this section shall be concluded as expeditiously as possible. The record of proceedings, including petitions filed, orders granted, and statements of reasons for decision, shall be maintained under security measures established by the Chief Justice of the United States, in consultation with the Attorney General and the Director of National Intelligence.

''(g) SEALED PETITIONS.—All petitions under this section shall be filed under seal. In any proceedings under this section, the court shall, upon request of the Government, review ex parte and in camera any Government submission, or portions of a submission, which may include classified information.

''(h) LIABILITY.—No cause of action shall lie in any court against any person for providing any information, facilities, or assistance in accordance with a directive under this section.

''(i) USE OF INFORMATION.—Information acquired pursuant to a directive by the Attorney General under this section concerning any United States person may be used and disclosed by Federal officers and employees without the consent of the United States person only in accordance with the minimization procedures required by section 102(a) or 102A(a). No otherwise privileged communication obtained in accordance with, or in violation of, the provisions of this section shall lose its privileged character. No information from an electronic surveillance under section 102 or an acquisition pursuant to section 102A may be used or disclosed by Federal officers or employees except for lawful purposes.

''(j) USE IN LAW ENFORCEMENT.—No information acquired pursuant to this section shall be disclosed for law enforcement purposes unless such disclosure is accompanied by a statement that such information, or any information derived from such information, may only be used in a criminal proceeding with the advance authorization of the Attorney General.

''(k) DISCLOSURE IN TRIAL.—If the Government intends to enter into evidence or otherwise use or disclose in any trial, hearing, or other proceeding in or before any court, department, officer, agency, regulatory body, or other authority of the United States, against an aggrieved person, any information obtained or derived from an electronic surveillance conducted under section 102 or an acquisition authorized pursuant to section 102A, the Government shall, prior to the trial, hearing, or other proceeding or at a reasonable time prior to an effort to disclose or use that information or submit it in evidence, notify the aggrieved person and the court or other authority in which the information is to be disclosed or used that the Government intends to disclose or use such information.

''(l) DISCLOSURE IN STATE TRIALS.—If a State or political subdivision of a State intends to enter into evidence or otherwise use or disclose in any trial, hearing, or other proceeding in or before any court, department, officer, agency, regulatory body, or other authority of a State or a political subdivision of a State, against an aggrieved person, any information obtained or derived from an electronic surveillance authorized pursuant to section 102 or an acquisition authorized pursuant to section 102A, the State or political subdivision of such State shall notify the aggrieved person, the court, or other authority in which the information is to be disclosed or used and the Attorney General that the State or political subdivision intends to disclose or use such information.

''(m) MOTION TO EXCLUDE EVIDENCE.—(1) IN GENERAL.—Any person against whom evidence obtained or derived from an electronic surveillance authorized pursuant to section 102 or an acquisition authorized pursuant to section 102A is to be, or has been, used or disclosed in any trial, hearing, or other proceeding in or before any court, department, officer, agency, regulatory body, or other authority of the United States, a State, or a political subdivision thereof, may move to suppress the evidence obtained or derived from such electronic surveillance or such acquisition on the grounds that—

''(A) the information was unlawfully acquired; or

''(B) the electronic surveillance or acquisition was not properly made in conformity with an authorization under section 102(a) or 102A(a).

''(2) TIMING.—A person moving to suppress evidence under paragraph (1) shall make the motion to suppress the evidence before the trial, hearing, or other proceeding unless there was no opportunity to make such a motion or the person was not aware of the grounds of the motion.

''(n) REVIEW OF MOTIONS.—If a court or other authority is notified pursuant to subsection (k) or (l), a motion is made pursuant to subsection (m), or a motion or request is made by an aggrieved person pursuant to any other statute or rule of the United States or any State before any court or other authority of the United States or any State—

''(1) to discover or obtain an Attorney General directive or other materials relating to an electronic surveillance authorized pursuant to section 102 or an acquisition authorized pursuant to section 102A, or

''(2) to discover, obtain, or suppress evidence or information obtained or derived from an electronic surveillance authorized pursuant to section 102 or an acquisition authorized pursuant to section 102A,

the United States district court or, where the motion is made before another authority, the United States district court in the same district as the authority, shall, notwithstanding any other law, if the Attorney General files an affidavit under oath that disclosure or an adversary hearing would harm the national security of the United States, review in camera and ex parte the application, order, and such other materials relating to such electronic surveillance or such acquisition as may be necessary to determine whether such electronic surveillance or such acquisition authorized under this section was lawfully authorized and conducted. In making this determination, the court may disclose to the aggrieved person, under appropriate security procedures and protective orders, portions of the directive or other materials relating to the acquisition only where such disclosure is necessary to make an accurate determination of the legality of the acquisition.

''(o) DETERMINATIONS.—If, pursuant to subsection (n), a United States district court determines that the acquisition authorized under this section was not lawfully authorized or conducted, it shall, in accordance with the requirements of law, suppress the evidence which was unlawfully obtained or derived or otherwise grant the motion of the aggrieved person. If the court determines that such acquisition was lawfully authorized and conducted, it shall deny the motion of the aggrieved person except to the extent

that due process requires discovery or disclosure.

''(p) BINDING ORDERS.—Orders granting motions or requests under subsection (m), decisions under this section that an electronic surveillance or an acquisition was not lawfully authorized or conducted, and orders of the United States district court requiring review or granting disclosure of directives, orders, or other materials relating to such acquisition shall be final orders and binding upon all courts of the United States and the several States except a United States court of appeals and the Supreme Court.

''(q) COORDINATION.—(1) IN GENERAL.—Federal officers who acquire foreign intelligence information may consult with Federal law enforcement officers or law enforcement personnel of a State or political subdivision of a State, including the chief executive officer of that State or political subdivision who has the authority to appoint or direct the chief law enforcement officer of that State or political subdivision, to coordinate efforts to investigate or protect against—

''(A) actual or potential attack or other grave hostile acts of a foreign power or an agent of a foreign power;

''(B) sabotage, international terrorism, or the development or proliferation of weapons of mass destruction by a foreign power or an agent of a foreign power; or

''(C) clandestine intelligence activities by an intelligence service or network of a foreign power or by an agent of a foreign power.

''(2) CERTIFICATION REQUIRED.—Coordination authorized under paragraph (1) shall not preclude the certification required by section 102(a) or 102A(a).

''(r) RETENTION OF DIRECTIVES AND ORDERS.—A directive made or an order granted under this section shall be retained for a period of not less than 10 years from the date on which such directive or such order is made.''.

(b) TABLE OF CONTENTS.—The table of contents in the first section of the Foreign Intelligence Surveillance Act of 1978 (50 U.S.C. 1801 et seq.) is amended by inserting after the item relating to section 102 the following:

''102A. Authorization for acquisition of foreign intelligence information.
''102B. Directives relating to electronic surveillance and other acquisitions of foreign intelligence information.''.

SEC. 4. JURISDICTION OF FISA COURT.

Section 103 of the Foreign Intelligence Surveillance Act of 1978 (50 U.S.C. 1803) is amended by adding at the end the following new subsection:

''(g) Applications for a court order under this title are authorized if the President has, by written authorization, empowered the Attorney General to approve applications to the court having jurisdiction under this section, and a judge to whom an application is made may, notwithstanding any other law, grant an order, in conformity with section 105, approving electronic surveillance of a foreign power or an agent of a foreign power for the purpose of obtaining foreign intelligence information.''.

SEC. 5. APPLICATIONS FOR COURT ORDERS.

Section 104 of the Foreign Intelligence Surveillance Act of 1978 (50 U.S.C. 1804) is amended—

(1) in subsection (a)—

(A) in paragraph (6), by striking ''detailed description'' and inserting ''summary description'';

(B) in paragraph (7)—

(i) in the matter preceding subparagraph (A), by striking ''or officials designated'' and all that follows through ''consent of the Senate'' and inserting ''designated by the President to authorize electronic surveillance for foreign intelligence purposes'';

(ii) in subparagraph (C), by striking ''techniques;'' and inserting ''techniques; and'';

(iii) by striking subparagraph (D); and

(iv) by redesignating subparagraph (E) as subparagraph (D);

(C) in paragraph (8), by striking ''a statement of the means'' and inserting ''a summary statement of the means'';

(D) in paragraph (9)—

(i) by striking ''a statement'' and inserting ''a summary statement''; and

(ii) by striking ''application;'' and inserting ''application; and'';

(E) in paragraph (10), by striking ''thereafter; and'' and inserting ''thereafter.''; and

(F) by striking paragraph (11).

(2) by striking subsection (b);

(3) by redesignating subsections (c) through (e) as subsections (b) through (d), respectively; and

(4) in paragraph (1)(A) of subsection (d), as redesignated by paragraph (3), by striking ''or the Director of National Intelligence'' and inserting ''the Director of National Intelligence, or the Director of the Central Intelligence Agency''.

SEC. 6. ISSUANCE OF AN ORDER.

Section 105 of the Foreign Intelligence Surveillance Act of 1978 (50 U.S.C. 1805) is amended—

(1) in subsection (a)—

(A) by striking paragraph (1); and

(B) by redesignating paragraphs (2) through (5) as paragraphs (1) through (4), respectively;

(2) in subsection (c)(1)—

(A) in subparagraph (D), by striking ''surveillance;'' and inserting ''surveillance; and'';

(B) in subparagraph (E), by striking ''approved; and'' and inserting ''approved.''; and

(C) by striking subparagraph (F);

(3) by striking subsection (d);

(4) by redesignating subsections (e) through (i) as subsections (d) through (h), respectively;

(5) in subsection (d), as redesignated by paragraph (4), by amending paragraph (2) to read as follows:

''(2) Extensions of an order issued under this title may be granted on the same basis as an original order upon an application for an extension and new findings made in the same manner as required for an original order and may be for a period not to exceed one year.'';

(6) in subsection (e), as redesignated by paragraph (4), to read as follows:

''(e) Notwithstanding any other provision of this title, the Attorney General may authorize the emergency employment of electronic surveillance if the Attorney General—

''(1) determines that an emergency situation exists with respect to the employment of electronic surveillance to obtain foreign intelligence information before an order authorizing such surveillance can with due diligence be obtained;

''(2) determines that the factual basis for issuance of an order under this title to approve such electronic surveillance exists;

''(3) informs a judge having jurisdiction under section 103 at the time of such authorization that the decision has been made to employ emergency electronic surveillance; and

''(4) makes an application in accordance with this title to a judge having jurisdiction under section 103 as soon as practicable, but not more than 168 hours after the Attorney General authorizes such surveillance.

If the Attorney General authorizes such emergency employment of electronic surveillance, the Attorney General shall require that the minimization procedures required by this title for the issuance of a judicial order be followed. In the absence of a judicial order approving such electronic surveillance, the surveillance shall terminate when the information sought is obtained, when the application for the order is denied, or after the expiration of 168 hours from the time of authorization by the Attorney General, whichever is earliest. In the event that such application for approval is denied, or in any other case where the electronic surveillance is terminated and no order is issued approving the surveillance, no information obtained or evidence derived from such surveillance shall be received in evidence or otherwise disclosed in any trial, hearing, or other proceeding in or before any court, grand jury, department, office, agency, regulatory body, legislative committee, or other authority of the United States, a State, or political subdivision thereof, and no information concerning any United States person acquired from such surveillance shall subsequently be used or disclosed in any other manner by Federal officers or employees without the consent of such person, except with the approval of the Attorney General if the information indicates a threat of death or serious bodily harm to any person. A denial of the application made under this subsection may be reviewed as provided in section 103.'';

(7) in subsection (h), as redesignated by paragraph (4)—

(A) by striking ''a wire or'' and inserting ''an''; and

(B) by striking ''physical search'' and inserting ''physical search or in response to a certification by the Attorney General or a designee of the Attorney General seeking information, facilities, or technical assistance from such person under section 102B''; and

(8) by adding at the end the following new subsection:

''(i) In any case in which the Government makes an application to a judge under this title to conduct electronic surveillance involving communications and the judge grants such application, the judge shall also authorize the installation and use of pen registers and trap and trace devices to acquire dialing, routing, addressing, and signaling information related to such communications and such dialing, routing, addressing, and signaling information shall not be subject to minimization procedures.''.

SEC. 7. USE OF INFORMATION.

Section 106(i) of the Foreign Intelligence Surveillance Act of 1978 (50 U.S.C. 1806(i)) is amended—

(1) by striking ''radio communication'' and inserting ''communication''; and

(2) by striking ''contents indicates'' and inserting ''contents contain significant foreign intelligence information or indicate''.

SEC. 8. CONGRESSIONAL OVERSIGHT.

(a) ELECTRONIC SURVEILLANCE UNDER FISA.—Section 108 of the Foreign Intelligence Surveillance Act of 1978 (50 U.S.C. 1808) is amended—

(1) in subsection (a)(2)—

(A) in subparagraph (B), by striking ''and'' at the end;

(B) in subparagraph (C), by striking the period and inserting ''; and''; and

(C) by adding at the end the following new subparagraph:

''(D) the authority under which the electronic surveillance is conducted.''; and

(2) by striking subsection (b) and inserting the following:

''(b) On a semiannual basis, the Attorney General additionally shall fully inform the Permanent Select Committee on Intelligence of the House of Representatives and the Select Committee on Intelligence of the Senate on electronic surveillance conducted without a court order.''.

(b) INTELLIGENCE ACTIVITIES.—The National Security Act of 1947 (50 U.S.C. 401 et seq.) is amended—

(1) in section 501 (50 U.S.C. 413)—

(A) by redesignating subsection (f) as subsection (g); and

(B) by inserting after subsection (e) the following new subsection:

''(f) The Chair of each of the congressional intelligence committees, in consultation with the ranking member of the committee for which the person is Chair, may inform—

''(1) on a bipartisan basis, all members or any individual members of such committee, and

''(2) any essential staff of such committee, of a report submitted under subsection (a)(1) or subsection (b) as such Chair considers necessary.'';

(2) in section 502 (50 U.S.C. 414), by adding at the end the following new subsection:

''(d) INFORMING OF COMMITTEE MEMBERS.—The Chair of each of the congressional intelligence committees, in consultation with the ranking member of the committee for which the person is Chair, may inform—

''(1) on a bipartisan basis, all members or any individual members of such committee, and

''(2) any essential staff of such committee, of a report submitted under subsection (a) as such Chair considers necessary.''; and

(3) in section 503 (50 U.S.C. 415), by adding at the end the following new subsection:

''(g) The Chair of each of the congressional intelligence committees, in consultation with the ranking member of the committee for which the person is Chair, may inform—

''(1) on a bipartisan basis, all members or any individual members of such committee, and

''(2) any essential staff of such committee, of a report submitted under subsection (b), (c), or (d) as such Chair considers necessary.''.

SEC. 9. INTERNATIONAL MOVEMENT OF TARGETS.

(a) ELECTRONIC SURVEILLANCE.—Section 105(d) of the Foreign Intelligence Surveillance Act of 1978 (50 U.S.C. 1805(d)), as redesignated by section 6(4), is amended by adding at the end the following new paragraph:

''(4) An order issued under this section shall remain in force during the authorized period of surveillance notwithstanding the absence of the target from the United States, unless the Government files a motion to extinguish the order and the court grants the motion.''.

(b) PHYSICAL SEARCH.—Section 304(d) of the Foreign Intelligence Surveillance Act of 1978 (50 U.S.C. 1824(d)) is amended by adding at the end the following new paragraph:

''(4) An order issued under this section shall remain in force during the authorized period of surveillance notwithstanding the absence of the target from the United States, unless the Government files a motion to extinguish the order and the court grants the motion.''.

SEC. 10. COMPLIANCE WITH COURT ORDERS AND ANTITERRORISM PROGRAMS.

(a) IN GENERAL.—Notwithstanding any other provision of law, and in addition to the immunities, privileges, and defenses provided by any other provision of law, no action, claim, or proceeding shall lie or be maintained in any court, and no penalty, sanction, or other form of remedy or relief shall be imposed by any court or any other body, against any person for an activity arising from or relating to the provision to an element of the intelligence community of any information (including records or other information pertaining to a customer), facilities, or assistance during the period of time beginning on September 11, 2001, and ending on the date that is 60 days after the date of the enactment of this Act, in connection with any alleged communications intelligence program that the Attorney General or a designee of the Attorney General certifies, in a manner consistent with the protection of State secrets, is, was, or would be intended to protect the United States from a terrorist attack. This section shall apply to all actions, claims, or proceedings pending on or after the effective date of this Act.

(b) JURISDICTION.—Any action, claim, or proceeding described in subsection (a) that is brought in a State court shall be deemed to arise under the Constitution and laws of the United States and shall be removable pursuant to section 1441 of title 28, United States Code.

(c) DEFINITIONS.—In this section:

(1) INTELLIGENCE COMMUNITY.—The term ''intelligence community'' has the meaning given the term in section 3(4) of the National Security Act of 1947 (50 U.S.C. 401a(4)).

(2) PERSON.—The term ''person'' has the meaning given the term in section 2510(6) of title 18, United States Code.

SEC. 11. REPORT ON MINIMIZATION PROCEDURES.

(a) REPORT.—Not later than two years after the date of the enactment of this Act, and annually thereafter until December 31, 2009, the Director of the National Security Agency, in consultation with the Director of National Intelligence and the Attorney General, shall submit to the Permanent Select Committee on Intelligence of the House of Representatives and the Select Committee on Intelligence of the Senate a report on the effectiveness and use of minimization procedures applied to information concerning United States persons acquired during the course of a communications activity conducted by the National Security Agency.

(b) REQUIREMENTS.—A report submitted under subsection (a) shall include—

(1) a description of the implementation, during the course of communications intelligence activities conducted by the National Security Agency, of procedures established to minimize the acquisition, retention, and dissemination of nonpublicly available information concerning United States persons;

(2) the number of significant violations, if any, of such minimization procedures during the 18 months following the effective date of this Act; and

(3) summary descriptions of such violations.

(c) RETENTION OF INFORMATION.—Information concerning United States persons shall not be retained solely for the purpose of complying with the reporting requirements of this section.

SEC. 12. AUTHORIZATION AFTER AN ARMED ATTACK.

(a) ELECTRONIC SURVEILLANCE.—Section 111 of the Foreign Intelligence Surveillance Act of 1978 (50 U.S.C. 1811) is amended by striking ''for a period not to exceed'' and all that follows and inserting the following: ''for a period not to exceed 90 days following an armed attack against the territory of the United States if the President submits to the Permanent Select Committee on Intelligence of the House of Representatives and the Select Committee on Intelligence of the Senate notification of the authorization under this section.''.

(b) PHYSICAL SEARCH.—Section 309 of such Act (50 U.S.C. 1829) is amended by striking ''for a period not to exceed'' and all that follows and inserting the following: ''for a period not to exceed 90 days following an armed attack against the territory of the United States if the President submits to the Permanent Select Committee on Intelligence of the House of Representatives and the Select Committee on Intelligence of the Senate notification of the authorization under this section.''.

SEC. 13. AUTHORIZATION OF ELECTRONIC SURVEILLANCE AFTER A TERRORIST ATTACK.

The Foreign Intelligence Surveillance Act of 1978 (50 U.S.C. 1801 et seq.) is further amended—

(1) by adding at the end of title I the following new section:

''AUTHORIZATION FOLLOWING A TERRORIST ATTACK UPON THE UNITED STATES

''SEC. 112. (a) IN GENERAL.—Notwithstanding any other provision of law, but subject to the provisions of this section, the President, acting through the Attorney General, may authorize electronic surveillance without an order under this title to acquire foreign intelligence information for a period not to exceed 90 days following a terrorist attack against the United States if the President submits a notification to the congressional intelligence committees and a judge having jurisdiction under section 103 that—

''(1) the United States has been the subject of a terrorist attack; and

''(2) identifies the terrorist organizations or affiliates of terrorist organizations believed to be responsible for the terrorist attack.

''(b) SUBSEQUENT CERTIFICATIONS.—At the end of the 90-day period described in subsection (a), and every 90 days thereafter, the President may submit a subsequent certification to the congressional intelligence committees and a judge having jurisdiction under section 103 that the circumstances of the terrorist attack for which the President submitted a certification under subsection (a) require the President to continue the authorization of electronic surveillance under this section for an additional 90 days. The President shall be authorized to conduct electronic surveillance under this section for an additional 90 days after each such subsequent certification.

''(c) ELECTRONIC SURVEILLANCE OF INDIVIDUALS.—The President, or an official designated by the President to authorize electronic surveillance, may only conduct electronic surveillance of a person under this section if the President or such official determines that—

''(1) there is a reasonable belief that such person is communicating with a terrorist organization or an affiliate of a terrorist organization that is reasonably believed to be responsible for the terrorist attack; and

''(2) the information obtained from the electronic surveillance may be foreign intelligence information.

''(d) MINIMIZATION PROCEDURES.—The President may not authorize electronic surveillance under this section until the Attorney General approves minimization procedures for electronic surveillance conducted under this section.

''(e) UNITED STATES PERSONS.—Notwithstanding subsection (a) or (b), the President

may not authorize electronic surveillance of a United States person under this section without an order under this title for a period of more than 60 days unless the President, acting through the Attorney General, submits a certification to the congressional intelligence committees that—

''(1) the continued electronic surveillance of the United States person is vital to the national security of the United States;

''(2) describes the circumstances that have prevented the Attorney General from obtaining an order under this title for continued surveillance;

''(3) describes the reasons for believing the United States person is affiliated with or in communication with a terrorist organization or affiliate of a terrorist organization that is reasonably believed to be responsible for the terrorist attack; and

''(4) describes the foreign intelligence information derived from the electronic surveillance conducted under this section.

''(f) USE OF INFORMATION.—Information obtained pursuant to electronic surveillance under this subsection may be used to obtain an order authorizing subsequent electronic surveillance under this title.

''(g) REPORTS.—Not later than 14 days after the date on which the President submits a certification under subsection (a), and every 30 days thereafter until the President ceases to authorize electronic surveillance under subsection (a) or (b), the President shall submit to the congressional intelligence committees a report on the electronic surveillance conducted under this section, including—

''(1) a description of each target of electronic surveillance under this section; and

''(2) the basis for believing that each target is in communication with a terrorist organization or an affiliate of a terrorist organization.

''(h) CONGRESSIONAL INTELLIGENCE COMMITTEES DEFINED.—In this section, the term 'congressional intelligence committees' means the Permanent Select Committee on Intelligence of the House of Representatives and the Select Committee on Intelligence of the Senate.''; and

(2) in the table of contents in the first section, by inserting after the item relating to section 111 the following new item:

''Sec. 112. Authorization following a terrorist attack upon the United States.''.

SEC. 14. AUTHORIZATION OF ELECTRONIC SURVEILLANCE DUE TO IMMINENT THREAT.

The Foreign Intelligence Surveillance Act of 1978 (50 U.S.C. 1801 et seq.) is further amended—

(1) by adding at the end of title I the following new section:

''AUTHORIZATION DUE TO IMMINENT THREAT

''SEC. 113. (a) IN GENERAL.—Notwithstanding any other provision of law, but subject to the provisions of this section, the President, acting through the Attorney General, may authorize electronic surveillance without an order under this title to acquire foreign intelligence information for a period not to exceed 90 days if the President submits to the congressional leadership, the congressional intelligence committees, and the Foreign Intelligence Surveillance Court a written notification that the President has determined that there exists an imminent threat of attack likely to cause death, serious injury, or substantial economic damage to the United States. Such notification—

''(1) shall be submitted as soon as practicable, but in no case later than 5 days after the date on which the President authorizes electronic surveillance under this section;

''(2) shall specify the entity responsible for the threat and any affiliates of the entity;

''(3) shall state the reason to believe that the threat of imminent attack exists;

''(4) shall state the reason the President needs broader authority to conduct electronic surveillance in the United States as a result of the threat of imminent attack;

''(5) shall include a description of the foreign intelligence information that will be collected and the means that will be used to collect such foreign intelligence information; and

''(6) may be submitted in classified form.

''(b) SUBSEQUENT CERTIFICATIONS.—At the end of the 90-day period described in subsection (a), and every 90 days thereafter, the President may submit a subsequent written notification to the congressional leadership, the congressional intelligence committees, the other relevant committees, and the Foreign Intelligence Surveillance Court that the circumstances of the threat for which the President submitted a written notification under subsection (a) require the President to continue the authorization of electronic surveillance under this section for an additional 90 days. The President shall be authorized to conduct electronic surveillance under this section for an additional 90 days after each such subsequent written notification.

''(c) ELECTRONIC SURVEILLANCE OF INDIVIDUALS.—The President, or an official designated by the President to authorize electronic surveillance, may only conduct electronic surveillance of a person under this section if the President or such official determines that—

''(1) there is a reasonable belief that such person is communicating with an entity or an affiliate of an entity that is reasonably believed to be responsible for imminent threat of attack; and

''(2) the information obtained from the electronic surveillance may be foreign intelligence information.

''(d) MINIMIZATION PROCEDURES.—The President may not authorize electronic surveillance under this section until the Attorney General approves minimization procedures for electronic surveillance conducted under this section.

''(e) UNITED STATES PERSONS.—Notwithstanding subsections (a) and (b), the President may not authorize electronic surveillance of a United States person under this section without an order under this title for a period of more than 60 days unless the President, acting through the Attorney General, submits a certification to the congressional intelligence committees that—

''(1) the continued electronic surveillance of the United States person is vital to the national security of the United States;

''(2) describes the circumstances that have prevented the Attorney General from obtaining an order under this title for continued surveillance;

''(3) describes the reasons for believing the United States person is affiliated with or in communication with an entity or an affiliate of an entity that is reasonably believed to be responsible for imminent threat of attack; and

''(4) describes the foreign intelligence information derived from the electronic surveillance conducted under this section.

''(f) USE OF INFORMATION.—Information obtained pursuant to electronic surveillance under this subsection may be used to obtain an order authorizing subsequent electronic surveillance under this title.

''(g) DEFINITIONS.—In this section:

''(1) CONGRESSIONAL INTELLIGENCE COMMITTEES.—The term 'congressional intelligence committees' means the Permanent Select Committee on Intelligence of the House of Representatives and the Select Committee on Intelligence of the Senate.

''(2) CONGRESSIONAL LEADERSHIP.—The term 'congressional leadership' means the Speaker and minority leader of the House of Representatives and the majority leader and minority leader of the Senate.

''(3) FOREIGN INTELLIGENCE SURVEILLANCE COURT.—The term 'Foreign Intelligence Surveillance Court' means the court established under section 103(a).

''(4) OTHER RELEVANT COMMITTEES.—The term 'other relevant committees' means the Committees on Appropriations, the Committees on Armed Services, and the Committees on the Judiciary of the House of Representatives and the Senate.''; and

(2) in the table of contents in the first section, by inserting after the item relating to section 112, as added by section 13(2), the following new item:

''Sec. 113. Authorization due to imminent threat.''.

SEC. 15. TECHNICAL AND CONFORMING AMENDMENTS.

The Foreign Intelligence Surveillance Act of 1978 (50 U.S.C. 1801 et seq.) is further amended—

(1) in section 105(a)(4), as redesignated by section 6(1)(B)—

(A) by striking ''104(a)(7)(E)'' and inserting ''104(a)(7)(D)''; and

(B) by striking ''104(d)'' and inserting ''104(c)'';

(2) in section 106(j), in the matter preceding paragraph (1), by striking ''105(e)'' and inserting ''105(d)''; and

(3) in section 108(a)(2)(C), by striking ''105(f)'' and inserting ''105(e)''.

The SPEAKER pro tempore. Debate shall not exceed 90 minutes, with 60 minutes equally divided and controlled by the chairman and ranking minority member of the Committee on the Judiciary, and 30 minutes equally divided and controlled by the chairman and ranking member of the Permanent Select Committee on Intelligence.

The gentleman from Wisconsin (Mr. SENSENBRENNER) and the gentleman from Michigan (Mr. CONYERS) each will control 30 minutes, and the gentleman from Michigan (Mr. HOEKSTRA) and the gentlewoman from California (Ms. HARMAN) each will control 15 minutes.

The Chair recognizes the gentleman from Wisconsin.

GENERAL LEAVE

Mr. SENSENBRENNER. Mr. Speaker, I ask unanimous consent that all Members may have 5 legislative days within which to revise and extend their remarks and include extraneous material on H.R. 5825, currently under consideration.

The SPEAKER pro tempore. Is there objection to the request of the gentleman from Wisconsin?

There was no objection.

Mr. SENSENBRENNER. Mr. Speaker, I yield myself such time as I may consume.

Mr. Speaker, I rise in strong support of H.R. 5825, the Electronic Surveillance Modernization Act. In 1978, Congress enacted the Foreign Intelligence Surveillance Act, or FISA for short, in order to provide a mechanism for the domestic collection of foreign intelligence information.

The goal of FISA was to secure the integrity of the fourth amendment while protecting the national security interests of the United States. When FISA was enacted, domestic communications and international communications were fundamentally different from one another. Specifically, domestic communications were transmitted via wire, while international communications were transmitted via radio.

In modern times international communications are increasingly transmitted through undersea cables which are considered wire. H.R. 5825 provides a technology-neutral definition of electronic surveillance to ensure that international communications are treated the same under the law regardless of the technology used to transmit them.

The bill also simplifies the process for getting a FISA court order and returns the focus of FISA to protecting those with a fourth amendment expectation of privacy.

On December 16 of last year, based on the leak of classified information, the New York Times published a story regarding a terrorism surveillance program operated by the National Security Agency. The President subsequently acknowledged that he had authorized this program after 9/11 to intercept the international communications of those with known links to al Qaeda and related terrorist organizations.

Notwithstanding the administration's position that this program is fully consistent with U.S. law and the Constitution, the President has requested that Congress provide additional and specific authorization to ensure that U.S. laws governing electronic surveillance are updated to reflect modern modes of communication.

Mr. Speaker, terrorist organizations are global in scope, and rely on electronic communications to plan and execute their murderous designs. We can all agree that electronic communications must not be impervious to detection by U.S. law enforcement intelligence officers whose vigilance has helped avert another terrorist attack on our soil in the 5 years since the 9/11 attacks.

As General Hayden testified on July 26, 2006, the National Security Agency intercepts communications and does so for only one purpose: ''To protect the lives, liberties and well beings of the citizens of the United States from those who would do us harm.''

General Hayden also noted that ''the revolution in telecommunications technology has extended the actual impact of the FISA regime far beyond what Congress could ever have anticipated in 1978, and I do not think that anyone can make a claim that the FISA statute was optimized to deal with 9/11 or to deal with the lethal enemy who likely already had combatants inside the United States.''

Mr. Speaker, H.R. 5825 updates FISA to reflect modern technology and the changing nature of the terrorist threat. This legislation combines the Judiciary Committee's provisions that streamline the FISA process with the Intelligence Committee provisions that provided the President much needed statutory flexibility to conduct surveillance of foreign communications.

This legislation responds to the urgent need to provide our Nation's law enforcement intelligence communities with 21st-century tools to meet and defeat a 21st-century threat.

It is crucial to improving our national efforts to detect and disrupt acts of terrorism before they occur on American soil. This bill is the product of extensive discussion and thoughtful deliberation. It will make America safer while safeguarding American civil liberties.

Mr. Speaker, I urge support of this vital legislation.

Mr. Speaker, I reserve the balance of my time.

Mr. CONYERS. Mr. Speaker, I yield myself such time as I may consume.

Mr. Speaker, ladies and gentlemen of the House, let me state from the outset that we support our government intercepting each and every conversation involving al Qaeda and its supporters. But I cannot support legislation that not only fails to bring the warrantless surveillance program under the law, but dramatically expands the administration's authority to conduct warrantless surveillance on innocent Americans.

This is the Bush bill. It is amazing to me that we would even be taking up a law that fails to regulate the present domestic spying program. Nearly 9 months after we first learned from the New York Times that there was a warrantless surveillance program going on, and we did not know it until then, there has been no attempt to conduct an independent inquiry into its legality.

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Not only has the Congress failed to conduct any sort of investigation, but the administration summarily rejected all requests for a special counsel or Inspector General review, and when the Office of Professional Responsibility finally opened an investigation, the President of the United States himself squashed it by denying the investigators security clearances.

Now, since 1978, there have been 12 amendments to this bill, 51 different changes. So let us not start off acting as though there have never been changes here before.

What we are doing, instead of restricting the administration and the National Security Agency, this bill grants the administration more and new authority to conduct warrantless surveillance of American citizens. Not only does the bill permit warrantless surveillance of the international communications of any American who is not a target, but it grants the administration new authority to conduct warrantless surveillance on domestic calls in many new circumstances.

We do not like this measure before us because, instead of bringing the President's warrantless surveillance program under the law, what has been done, without much finesse, is to dramatically expand his authority and permit even broader and more intrusive warrantless surveillance of the program and the phone calls and the e-mails of innocent Americans.

It raises severe constitutional questions, the fourth amendment and the equal protection of agencies and subjects everything in this area to ill-considered and unfair process.

But it is not just the law professors and the civil liberty unions that are supporting it. We have here a statement from former national security officials, and I will insert the statement of former national security officials in the RECORD at this time.

STATEMENT OF FORMER NATIONAL SECURITY OFFICIALS

The President has spoken repeatedly and emotionally in recent days about the need for intelligence professionals to have clarity in the law. He has emphasized that it is not fair to ask these men and women to operate in an uncertain legal environment and that, in fact, legal uncertainty hampers operational effectiveness and thereby jeopardizes our national security. Yet legal uncertainty is exactly what will result if Congress heeds the President's call to enact legislation that replaces the obligation to use the procedures of the Foreign Intelligence Surveillance Act with broad language about relying upon the President's constitutional authority.

Before FISA was enacted, courts addressed the issue of warrantless surveillance for domestic security purposes but did not clearly resolve the scope of the President's authority regarding foreign intelligence surveillance. FISA was enacted in order to clarify this murky legal area by setting forth a clear process for electronic surveillance of foreign powers and agents of foreign powers. The Executive Branch welcomed the clarity and this law has been viewed as an essential national security tool for 28 years.

This legislation would return a complex subject to the murky waters from which FISA emerged by making going to the FISA court or applying FISA in any way optional rather than mandatory. It leaves it to the President to decide when he has the authority to conduct warrantless surveillance of Americans or foreigners. Whether he has made the right determination will not be known unless and until it is challenged in court.

If advances in technology or other exigencies not contemplated in FISA present the

President with a national security emergency, he should have a window in which to act while promptly seeking appropriate amendments to FISA—and this could be provided for in the statute. But this extraordinary emergency authority should not be permitted effectively to repeal FISA.

FISA was a political compromise between the Legislative and Executive branches of government; unforeseen exigencies should require those branches of government to continue to coordinate, not condone unilateralism by either branch. Indeed, the world has become so much more complex, both technologically and socially, than it was in 1978, that making FISA optional rather than mandatory would significantly destabilize the balance struck then between law and policy.

As individuals with extensive experience in national security and intelligence, we strongly urge that the requirements of FISA remain just that—requirements, not options. Congress should continue to work to get the facts and if, once they are provided, these facts demonstrate the need for changes in the law, amend it only as needed to meet genuine national security imperatives. Legal clarity is just as essential in this context as any other in which intelligence or law enforcement officers are asked to operate. FISA provides that clarity and should not be abandoned or amended in ways that render it irrelevant.

Ken Bass
Formerly Counsel for Intelligence Policy, Department of Justice
Eugene Bowman
Formerly Deputy General Counsel, Federal Bureau of Investigation
Mary DeRosa
Formerly Special Assistant to the President
Formerly Legal Advisor, National Security Counsel
Juliette Kayyem
Formerly Member, National Commission on Terrorism (The Bremer Commission)
Formerly Legal Advisor to the Attorney General, Department of Justice
Elizabeth Larson
Formerly Senior Staff, House Pennanent Select Committee on Intelligence
Formerly Senior Executive, Central Intelligence Agency
Elizabeth Rindskopf Parker
Formerly General Counsel, National Security Agency
Formerly General Counsel, Central Intelligence Agency
F. Whitten Peters
Formerly Secretary of the Air Force
Formerly Principal Deputy General Counsel, Department of Defense
Stephen Saltzburg
Formerly Deputy Assistant Attorney General, Criminal Division, Department of Justice
William S. Sessions
Formerly Director, Federal Bureau of Investigation
Formerly Chief United States District Judge for the Western District of Texas
Michael A. Smith
Formerly Assistant General Counsel, National Security Agency
Brit Snider
Formerly General Counsel, Senate Select Committee on Intelligence
Formerly Inspector General, Central Intelligence Agency
Suzanne E. Spaulding
Formerly General Counsel, Senate Select Committee on Intelligence
Formerly Assistant General Counsel, Central Intelligence Agency
Michael A. Vatis
Formerly Director, National Infrastructure Protection Center, Federal Bureau of Investigation
Formerly Associate Deputy Attorney General, Department of Justice

I lift up the names of two people in particular: William Sessions, the former Director of the Federal Bureau of Investigation, formerly Chief Judge of the Western District of Texas; and William H. Webster, formerly Director of the Federal Bureau of Investigation and former Director of the Central Intelligence Agency.

There is a wide agreement that this legislation is not what we should be doing. It should be rejected because we are giving the administration unilateral authority to review the call records and e-mails of millions of Americans and permits the administration to use surveillance devices without cause, thereby reinstituting the discredited ''total information awareness'' program that kept records on hundreds of millions of Americans.

Hidden in the fine print are provisions which grant the administration authority to maintain permanent records on innocent American citizens, granting the administration new authority to demand personal records without court review, and terminating any and all legal challenges to unlawful wiretapping.

So we are joined in our position by the Computer and Communications Industry Association, including Microsoft, Verizon, Google and Intuit; law school deans, 63 of them; 13 former national security officials; the Center for Democracy and Technology; and the Center for National Security Studies.

We must fight terrorism, but we must fight it in the right way, consistent with our Constitution and in a manner that serves as a model for the rest of the world. This bill fails that test.

Mr. Speaker, I reserve the balance of my time.

Mr. SENSENBRENNER. Mr. Speaker, my speakers are on their way to the floor, and I reserve the balance of my time.

Mr. CONYERS. Mr. Speaker, I yield 2½ minutes to the gentleman from New York (Mr. NADLER), ranking subcommittee member.

Mr. NADLER. Mr. Speaker, I rise in opposition to this dangerous and unnecessary legislation. Dangerous because it threatens the fundamental rights all Americans hold dear, and unnecessary because the sponsors appear to believe that freedom is the enemy.

The right to engage in surveillance of communications is not at issue today. What is at issue is the right to spy on Americans in the United States without a warrant from a court.

Nowhere under current law is there any requirement that the government stop listening to terrorists until they get can a court order. Existing law gives the government 72 hours after it has begun surveillance to get a warrant from the secret FISA court.

Our colleagues, the gentleman from California (Mr. SCHIFF) and the gentleman from Arizona (Mr. FLAKE), have proposed to extend that time so the government has more time to make its case; and they have proposed to update the FISA law so as to make it unnecessary to get a warrant to tap a conversation between two persons outside the United States, even if the conversation is routed through the United States. That proposal solves all the legitimate concerns with FISA.

It is so reasonable a proposal that this Republican rubber-stamp Congress refused to let us even get a vote on it. It is not surprising that the process of taking away liberty should trample on democracy as well.

What the President wants, and the Republican Congress is prepared to give, is unrestrained authority to spy on anyone, without having to answer to anyone. Once again, the President wants to be above the law, and this House appears ready to oblige him.

The power to use every tool we have to gain as much intelligence on the terrorists as we can is a vitally important power, and we support that power as long as it is constrained by law.

It is also a dangerous and easily abused power. We have plenty of experience with the abuse of that power. Remember J. Edgar Hoover wiretapping Martin Luther King, for example. That is why we have a Constitution. That is why we have courts. That is why we have checks and balances. That is why we have legal controls on the executive branch, not to protect the bad guys but to protect the rest of us from abuses of power.

Unchecked power, no matter what the purpose is dangerous. It is also unnecessary. History will judge this Congress harshly when this inevitably bad bill is approved.

Do not be stampeded into signing away our freedom. Let us insist that this be done right, by rejecting this very wrong and dangerous bill and considering the very reasonable alternative given to us by the bipartisan gentlemen, Mr. SCHIFF and Mr. FLAKE.

Mr. SENSENBRENNER. Mr. Speaker, I yield 2 minutes to the gentlewoman from New Mexico (Mrs. WILSON), the author of the bill.

Mrs. WILSON of New Mexico. Mr. Speaker, I think it is important for people to understand tonight why we are doing this.

I believe very strongly that intelligence is the first line of defense in the war on terrorism. That means we have to have intelligence agencies and capabilities that are agile, that are responsive to changes in technology, and that also protect the civil liberties of Americans.

It is hard to understand and hard to explain, frankly, the FISA law to people who do not deal day in and out with these things, but I have got to tell you this is how I have tried to explain it.

I live in New Mexico very near Route 66. Route 66 is the mother road that went from Chicago to LA through every little town along the way. But then modernization came along, and we replaced Route 66 with Interstate 40. We no longer have the stoplights and the intersections. We created on ramps and off ramps and concrete barriers to protect the citizens where traffic was moving very, very quickly. That is kind of like what we are trying to do here with the Foreign Intelligence Surveillance Act.

Now, it bothers me a little bit that for 4 years Democrat leaders in this House, including the minority leader and the ranking member of the Intelligence Committee, were briefed on the President's terrorist surveillance program multiple times, and now, when I come to the floor of the House with a bill that proposes putting signs and rules of the road in place to protect American civil liberties, you object to the controls and protections. If there were concerns about the fourth amendment, those concerns should have been raised 4 years ago.

The fourth amendment requires that people in America be free from unreasonable search and seizure. We have set in place rules of the road in the wake of a terrorist attack, when there is an armed attack on the United States or when an attack is imminent on the United States, rules of the road that are reasonable, that are constitutional, that protect civil liberties and that also keep us safe in the event of terrorist attack.

Mr. CONYERS. Mr. Speaker, I am pleased to yield 2 minutes to the gentleman from Virginia (Mr. SCOTT), a member of the Judiciary Committee.

Mr. SCOTT of Virginia. Mr. Speaker, I rise in opposition to the legislation.

First, we are legislating in the dark. We do not even know what the President is doing now because he will not tell us, but we do know that he says he will not continue doing what he is doing unless we retroactively authorize it and immunize everyone who participated in the illegal activity from any criminal and civil liability.

But for the New York Times disclosure that the administration had authorized secret surveillance of domestic conversations, we would not even know about it now. When exposed, the President claimed he was operating under inherent powers, but court decisions have found that the President cannot simply declare administration actions constitutional and lawful, whether or not they are.

Yet rather than finding out what is going on, we are moving forward with this legislation not only to authorize something in the future but to retroactively legalize whatever has been going on in the past.

Yesterday, under the military tribunal bill, we authorized what had previously been considered torture and retroactively immunized everybody involved in it. Today, we do the same type of retroactive approval and immunization to what may be illegal domestic surveillance.

The President already has broad latitude to conduct domestic surveillance, including surveillance of American citizens under the Foreign Intelligence Surveillance Act, totally in secret, so long as it is overseen by the FISA court.

So this is not a question of whether or not dangerous terrorists should be wiretapped. Of course they should, and they can be under present law, but in a democratic society with checks and balances, we should insist that some checks and balances occur, either before the wiretap or after the wiretap in the case of an emergency.

This bill does not enhance security, but it does allow surveillance without the traditional checks and balances that have served our Nation well. This bill, therefore, should be defeated.

Mr. SENSENBRENNER. Mr. Speaker, I yield 4 minutes to the gentleman from California (Mr. DANIEL E. LUNGREN).

Mr. DANIEL E. LUNGREN of California. Mr. Speaker, I thank the gentleman for yielding.

Mr. Speaker, I am not sure what bill I just heard referred to. As I read this bill, as one of those who helped to write this bill, we have time limits in this bill. We have notices in this bill. We have requirements in this bill. This bill attempts to do what we should want to do, that is, base it on the expectation of privacy of the individual involved.

This bill attempts to try and bring up to date the FISA law, a law that was established at a time when technology was far different than it is today. This is an attempt to try and bridge that gap that was created as a result of technology changing.

We set into motion by the law when FISA was first established and in accordance with those technologies which were then available. This is an attempt to allow us to still secure that kind of information that was always allowed under the FISA law, always anticipated to be under the FISA law, but which might be brought into question by the change in technology which has taken place.

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It also attempts to try and deal with that tension I mentioned before that exists as a result of the constitutional powers that the President has, that we have, and that the judicial branch has and in an area of law where for many years, since the beginning of this Republic, the Supreme Court has found that the President has not exclusive, but preeminent, power or preeminent authority.

And there is a reason for this. It is the reason Benjamin Franklin talked about in the quote I gave earlier this evening. It is the reason for the kind of functions that take place in a war-time scenario. It is a recognition that you can have one Commander in Chief and that one Commander in Chief has, as part of his responsibility, the requirement to be able to obtain intelligence about the enemy, intelligence about the foreign power.

So the question is, How do you construct a law which allows the President to exercise that responsibility and at the same time allows us to exercise our responsibility? There seems to be this idea where we say that there is an inherent power in the President, but then we don't recognize it at all. Or if he acts, and acts pursuant to that constitutional provision, what he has done is unconstitutional and illegal. And we therefore say, when we try to construct a law which we hope will cover most of the areas of activity by the President, where it will engender a greater spirit of cooperation, we say that what he did or if he asserts that authority, somehow that is unlawful or unconstitutional.

We have prerogatives in the House of Representatives. There are areas of cooperation. There are areas where we have preeminent power, such as the House of Representatives is given the responsibility and the authority to begin any law which would take money from the pockets of our constituents. The President of the United States cannot do that under the Constitution, yet he does work with us in that regard, in many different ways even before he gets the final bill.

What we have done here is to try to set up a structure which calls for the kind of activity that will be reported to us on a regular basis, with time requirements that don't exist in current law today. It circumscribes some of the activities that otherwise are questionable right now, and it sets up a framework for cooperation, it seems to me.

So I hear a lot of, and I have used this word before, but hyperbole here on the floor. We have men and women of good will on both sides of the aisle that have differences of opinion on this. But to condemn this as somehow an effort for us to give away our power; that somehow this allows the President to continue to act in an illegal way or to cover up previous illegal activity betrays a lack of understanding of the Constitution, of the structure of this House, and of activity of prior administrations, both Democrat and Republican.

I would ask us all to support this well-crafted bill.

Mr. CONYERS. Mr. Speaker, I yield 2½ minutes to a distinguished member of the committee, Mr. SCHIFF.

Mr. SCHIFF. I thank the gentleman for yielding.

My colleague from California is right, we do have reasonable differences of opinion on this legislation. Regrettably, we won't get a chance to vote on them. The bipartisan substitute that I offered with Mr. FLAKE will not be permitted to come up for a vote tonight.

Let us look at where we are. It is 5 years since 9/11. And in those 5 years, the Justice Department, the NSA have not come to Congress to ask for the changes that are being proposed by this bill. Indeed, but for the fortuity of the disclosure of the secret program by the New York Times, we wouldn't be here at all. That says something about the efficacy of the current law and the current FISA court.

Now, I happen to think the FISA laws can be improved. We have amended them, though, in 25 different ways over the last several years, so it is not as if this 28-year-old act has been untouched. The question here, the rub here is not what we do with foreigners who are talking to other foreigners on foreign soil, as my colleagues in the majority would like us to believe. The rub here is what do we do about Americans on American soil.

Do we want to entrust to the government and say you can surveil an American here at home without any court supervision? We are going to take entire programs off the books. We are going to embody a philosophy that says to the government, we trust you. We don't need a check and balance. My colleague says that the transportation analogy would be rules of the road. Well, the more accurate analogy would be if we had a speed limit sign and people were racing past it and violating the speed limit, the base bill would say, tear down the sign or do away with the court that would enforce the law by stripping the court of the jurisdiction to review the program.

That is not what we are here to do. We are here to say to the American people that those that wish us harm we will go after with every tool. But you, who are law-abiding citizens of this country, have a reasonable expectation of privacy in your homes and we will respect that. When we intrude your home and your phone and your e-mail, you will have the confidence of knowing that a court is overseeing what the government does.

Because the Framers' philosophy was check and balance. It served us well for 200 years. It will continue to serve us well.

Mr. SENSENBRENNER. Mr. Speaker, I yield 2 minutes to the gentleman from Arizona (Mr. FLAKE).

Mr. FLAKE. Mr. Speaker, I thank the gentleman for yielding, and I appreciate the gentleman from California and the opportunity to work with him on the substitute.

Mr. Speaker, I rise today in opposition to H.R. 5825. In 1978, Congress passed a seminal piece of legislation called FISA. This act recognized that while the President has inherent authority to protect American citizens, Congress has clear authority to regulate that surveillance.

There have been many technological changes over the past 28 years, and FISA has been amended many times to adapt to those changes. But, now, we here in Congress are confronted with the knowledge that the executive branch has chosen to conduct surveillance outside of the strictures of FISA. We must now choose whether to allow warrantless surveillance to continue or whether we should bring the terrorist surveillance program and any other programs that might be in operation under FISA's authority. If we do not, we will essentially have two categories of surveillance programs: one on the books and one that is off the books.

Now, perhaps the existence of FISA has made us all complacent. We have not been confronted for the past three decades with reports of executive branch abuse. But prior to FISA's passage, such abuses were legion. The Church Commission of the mid-1970s identified instances of abuse of the executive branch surveillance power that were so egregious that they thought it necessary to bring in FISA.

Do we want to return to the pre-FISA era? I would submit that we should not. Yet the bill we will vote on tonight will ensure that surveillance will continue to be gathered outside of FISA, effectively returning us to that era.

As I have said before, the acid test for Republicans should be as follows: Would I more jealously guard the congressional prerogative to regulate the President's inherent authority to conduct warrantless surveillance if the current occupant of the White House did not share my party affiliation? If the answer is yes, then it is our obligation to vote against the underlying bill and to vote instead for the motion to recommit.

Mr. CONYERS. Mr. Speaker, I am pleased to yield 2½ minutes to the distinguished gentleman from Maryland (Mr. VAN HOLLEN).

Mr. VAN HOLLEN. I thank my colleague, Mr. Speaker.

Let us be clear about one thing. As we have all said, we understand that electronic surveillance is a vital tool in the war on terror. We all want to know when Osama bin Laden is calling: when he is calling, who he is calling, and what he is saying. Existing law, FISA, gives the President the authority to do that. And if the President wants greater flexibility in using that authority, he should come to the Congress and tell us exactly what additional authority he needs.

As has been said, this Congress has already amended FISA, the electronic surveillance law, more than 25 times since 9/11 to accommodate changing technologies. That is why it was so troubling to learn that what we as a Congress did in the PATRIOT Act with respect to electronic surveillance was essentially a meaningless exercise. We gave the President expanded authorities, but the President has since argued that he can go beyond the expanded authorities that we gave him, and he has ignored the work of the Judiciary Committee and this Congress.

On what basis does he do this? This President claims when it comes to conducting electronic surveillance he is, in the final analysis, not constrained by the laws passed by this Congress. He claims his constitutional authority as Commander in Chief under article II in this area ultimately allows him to ignore the will of the Congress.

Take a look at the administration's legal memorandum of January 19, 2006. Essentially, they say that we don't have the power ultimately to regulate in this area. And I find it incredibly curious that after the Judiciary Committee, on a bipartisan basis, adopted language proposed by Mr. FLAKE that simply said Congress finds that article I, section 8, clause 18 of the Constitution, known as the necessary and proper clause, grants Congress clear authority to regulate the President's inherent power to gather foreign intelligence. That was passed on a bipartisan basis. It is gone from this bill. Mr. FLAKE's amendment is gone from this bill. That is taken out of this bill.

Now, imagine, here we are as a Congress, in passing a law that seeks to regulate the President's authority in this area, albeit giving him additional authorities, that in passing that law we strip out the provision that says we as a Congress find that we have the power to regulate in this area. It is a total abdication of congressional responsibility. It is ceding the President's argument that Congress doesn't matter in this area.

I believe, ultimately, it is a dangerous power grab on behalf of the administration; and this Congress, on a bipartisan basis, has not stood up to our responsibilities under the Constitution.

Mr. SENSENBRENNER. Mr. Speaker, I yield 3 minutes to the gentleman from Texas (Mr. GOHMERT).

Mr. GOHMERT. Mr. Speaker, I am grateful to our chairman.

This is critical. We are in a war with people who want to destroy our way of life. Now, we are rightfully concerned about the civil rights of Americans, but the thing is this doesn't have to do with the civil rights of Americans. If the President, or any President, I don't care who it is, would authorize wiretapping surveillance of American to American, then I will be right here

with anybody else calling them to task. That is not what we are about here.

And, in fact, in this act, it actually updates the definition of who is covered under FISA to ensure that electronic surveillance is narrowly focused on America's enemies. That is part of what is so important here.

Another aspect that makes this even more crucial today: some have said, why now? Why today? Is this all for politics? Well, I don't know. The question is, when a Federal judge in Detroit strikes this down, who was hand picked, let's face it. As I understand, there were 30 lawsuits filed around the country, so that as soon as the ACLU and most liberal folks got the judge they wanted from the draw in each of those jurisdictions, they dismissed all the others and got the most liberal judge they could get. That is inappropriate. That is not justice. This is putting our Nation at risk. This is something we have to do now.

Some have said, well, gee doesn't it really affect the rights of Americans? And the answer is no, not unless you are dealing directly with a foreign terrorist. This is not about domestic to domestic, American to American.

We have heard some on the other side bring up scripture, that we need to do unto others, even if they are not Americans. We need to do unto others, I would submit to you, and I love it when people call on scripture like my brothers and sisters from the other side of the aisle, because it brought to mind to me Romans 13–4 that says, ''for it,'' the government, ''is a servant of God for your good. But if you do evil, be afraid. For the government does not bear the sword without purpose. It is the servant of God to inflict wrath on the evildoer.'' So if we want to invoke ''do unto others,'' let's look at the rest of the verses and get it in context.

Individually, should we go after people who are after our country? Absolutely not. That is inappropriate. But the government, which is us, has not only an obligation, but we have the critical duty to make this happen.

So I would humbly submit that because we have rogue Federal judges out there who will do their will to destroy this administration, or any administration's effort to protect us, we have to do our job.

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We have got to make sure that this government does deal with evil, does deal with those who seek to destroy us, and, yes, put them under surveillance; not Americans but foreigners, because that is our job. That is what we are required to do. That is what I swore to do when I joined the Army, when I swore to defend the Constitution against all enemies, foreign and domestic. That is what we still have got to do.

Mr. CONYERS. Mr. Speaker, I yield 2½ minutes to the gentlewoman from Texas, Ms. SHEILA JACKSON-LEE, a distinguished member of the Committee on the Judiciary.

Ms. JACKSON-LEE of Texas. Mr. Speaker, in recognition of the Federal judiciary, I know that as they take an oath of office that their commitment is to serve the American people and the United States of America with the dignity and respect of that office. It has not come to my attention there are any number of ''rogue judges'' that would undermine the Constitution. But I do believe that it is crucial that the facts of this debate be established and why there is such opposition to an initiative that deals with the security of America.

There is no divide, I have said this, I think, on any number of occasions, on the commitment of members of the Democratic Caucus on securing America. In fact, there are any number of experts who have engaged in the issues of security and intelligence for a very long period of time.

But, frankly, we are arguing against the broad brush that this Congress has now given to the Bush administration, and the Bush administration has made no convincing case to Congress justifying the need to change the law and to satisfy Congress, nor has Congress been able to satisfy itself that any recommended changes would be constitutionally permissible.

Chairman HOEKSTRA said that Congress simply should not have to play 20 questions to get the information that it deserves under our Constitution. That is the chairman of the Intelligence Committee.

Frankly, I think it is important to note that the President, this administration, has not identified any technological barriers to the operation of FISA. I believe in modernizing it. However, most of the legislative proposals to amend FISA do not attempt to modernize the law, but rather erode the fourth amendment protection, since available technology allows the interception of more communications.

Let me tell you what happens in this legislation. First of all, there is an opportunity to drag in the innocent. This new bill could drag in journalists and foreign workers of high-tech companies. This bill, for example, radically lifts the universe of warrantless searches. It drastically amends existing definitions in a manner that will permit government to retain indefinitely information collected on Americans.

This is about protecting Americans with this broad brush. This is about not going back to McCarthyism. This is about making sure that we secure us within our borders, northern and southern and otherwise, but it is to say do not turn us into terrorizing ourselves.

The fourth amendment has not been abolished. This could have been amended in collaboration with our colleagues to protect civil liberties, the 4th Amendment, and to secure America. This is a rush to the election. I ask my colleagues to oppose this legislation.

Mr. SENSENBRENNER. Mr. Speaker, I yield 4 minutes to the gentleman from Arizona (Mr. FRANKS).

Mr. FRANKS of Arizona. Mr. Speaker, I thank the chairman.

Mr. Speaker, in the very simplest of terms, the strategic goal of terrorists in this war is to be able to hide from justice long enough to be able to gain access to weapons of mass destruction with which they can radically alter the future of American freedom for generations to come. The strategic challenge that we face is in finding and defeating terrorists before they gain access to such weapons and proceed to achieve their horrifying goal.

It is obvious that the critical factor in all of this effort is intelligence, for if we knew where every terrorist in the world was at this moment, we could destroy nearly all of them in less than 60 days.

But, Mr. Speaker, we have been held back by liberals in this country. Every effort the President has made to gain such intelligence has been resisted.

We should consider the terrorists' own words if we doubt their commitment to strike this country in the most horrendous way possible. Osama bin Laden said many years ago, ''It is our religious duty to gain nuclear weapons.'' Hezbollah's Nasrallah said of America, ''Let the entire world hear me. Our hostility to the Great Satan is absolute. Regardless of how the world has changed after September 11, death to America will remain our reverberating and powerful slogan. Death to America.''

Terrorists, Mr. Speaker, believe that they have a critical advantage over the free people of the world. They believe their will is far stronger than ours and that they need only to persevere to break our resolve.

Mr. Speaker, the message of liberals in this country has only encouraged terrorists in that belief. If we fail to use our best and critical intelligence mechanisms to fight and defeat terrorists in these critical days, our children and grandchildren will pay an unspeakable price, and history will condemn this generation for such profound irresponsibility in the face of such an obvious threat to human peace.

We need to pass this bill, Mr. Speaker.

Mr. CONYERS. Mr. Speaker, I am pleased to yield 2½ minutes to the gentlewoman from California (Ms. WATERS), a member of the Judiciary Committee.

Ms. WATERS. Mr. Speaker, if there is one thing the American people know, they know that America has a Constitution that protects us from being spied on by our government. Everything about this bill makes a mockery

of the Constitution of the United States of America. This administration has literally thrown the Constitution out the window.

In committee markup, the majority jammed a substitute amendment down our throats that basically undermines that part of the Foreign Intelligence Surveillance Act that requires that the administration get a warrant before eavesdropping on American citizens. Now the majority is jamming another Republican substitute or comprehensive amendment down the throats of the American people by considering this bill under what is known as a closed rule, which prohibits Democrats from offering any changes or amendments.

As we grapple with the war on terrorism, the constitutional power of the President has been stretched until it cannot be stretched anymore, from the use of force executed against Iraq, to the initiation of a warrantless surveillance program that targets innocent Americans.

In April, the U.S. Attorney General told the Judiciary Committee that even if that authorization to use military force resolution were determined not to provide the legal authority for the program that the President's inherent authority to authorize foreign intelligence surveillance would permit him to authorize the terrorist surveillance program.

The imperial President can do whatever he wants. Mr. President, Mr. Attorney General, Mr. Chairman, why then do we need this legislation?

The President illegally and unconstitutionally authorized the wholesale collection of domestic communications, and now the majority wants to give him legislative permission. This is not fair or honest.

This bill broadens the scope of those the President can monitor, so innocent people can be violated so long as the surveillance is directed at so-called ''one permissible target.'' It also removes one of the central requirements for conducting warrantless surveillance, one that provides the most protection to the American people. And, as FISA has said, there is no substantial likelihood that the surveillance will acquire the contents of any communication to which a United States person is a party.

They shouldn't be spying on us. If what the President is doing right now is so clearly authorized and is in the best interests of our Nation's security, why was this provision so troublesome? Is it clear that the fourth amendment rights of the American people are a burden to this administration? If a case is so extreme that it would take too long to obtain a warrant, these requirements shouldn't be difficult to meet.

Mr. SENSENBRENNER. Mr. Speaker, I yield 3½ minutes to the gentlewoman from Connecticut (Mrs. JOHNSON).

Mrs. JOHNSON of Connecticut. Mr. Speaker, I thank the chairman for yielding me time.

Mr. Speaker, I rise today in strong support of this legislation that is so important to our Nation's security when a new type of warfare threatens our security. I appreciate the good work of my friend from New Mexico, my colleague Heather Wilson, to bring this bill to the floor, she and a number of her colleagues.

The bill will authorize the NSA's terrorist surveillance program, which is truly vital to our Nation's security. Remember back to 9/11? We in this House ran down the street away from this Capitol because we were scared, and all of America was scared. Nobody knew where the next strike was going to hit. Nobody knew how much others had planned.

That was September 11. On October 25, the leadership of the House and Senate, Democrats and Republicans, leadership and heads of the Intelligence Committee, met with the President and the Vice President to look at this program and agreed that it was necessary to our security, that we needed to be able to pick up the phone if there was a call from a terrorist number into America. We needed to know what was being said, and we couldn't wait.

Ever since that October 25 date, the leadership of both parties in the House and Senate have routinely overseen this program. At the end of every meeting they came to the conclusion that what we were learning to keep our Nation safe was worth the targeted program that intercepted calls to known terrorist numbers, to numbers in the United States of America.

Now, some have said here tonight we have the 72-hour application process under FISA to address the need to intercept such calls. FISA is paperwork heavy. The critical factor is not the time available to go to the FISA court after the emergency application, but the detailed requirements for information that must be definitively known before you can even start the emergency surveillance.

There are 11 separate items: the identity of the target, the description of the target, and so it goes, all down through the 11. I don't have time to read all 11.

There is paperwork filled out first by the analysts at NSA, and then looked at by the lawyers at NSA, and then looked at by the lawyers in the Department of Justice. Not only lots of paperwork, but layers of lawyers.

So when my colleague from New Mexico says that we need rules of the road for this program that has been so crucial to our security, frankly, I am proud to support her.

Let me conclude with a quote from CIA Director Michael Hayden: ''Had this program (the NSA surveillance) been in effect prior to 9/11, it is my professional judgment that we would have detected some of the al Qaeda operatives in the United States and we would have identified them as such. The NSA program allows faster movement than is possible under FISA.''

It is our responsibility as leaders of this Nation to make that faster movement possible to defend our Nation, and to do it in harmony with protection of our civil rights, which rules of the road do.

Mr. CONYERS. Mr. Speaker, I am pleased now to yield 2 minutes to the distinguished minority whip, the gentleman from Maryland (Mr. HOYER).

Mr. HOYER. Mr. Speaker, I thank the gentleman.

Mr. Speaker, every single Member of this body supports giving our Commander in Chief the tools necessary to track terrorists, to intercept their communications, and to disrupt their plots. Any suggestion otherwise, any suggestion that any Member of this body somehow seeks to coddle terrorists who want to attack our Nation and kill our people demeans our discourse and is beneath the dignity of this institution.

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Make no mistake. Our highest duty is to protect the American people, secure our homeland, strengthen our national security, and defend the Constitution of the United States. This legislation, unfortunately, is deeply flawed and not bipartisan, and would turn the Foreign Intelligence Surveillance Act on its head. It fails to explicitly preserve FISA's exclusivity. Thus, by implication, it allows the President to conduct surveillance of Americans pursuant to any inherent authority argument.

The bill makes sweeping changes to the definition of electronic surveillance, allowing the National Security Agency to listen without warrant to the content of any communication that is from the United States to overseas or vice versa. The bill allows for warrantless surveillance after an armed attack or a terrorist attack or anticipation of an imminent attack; yet these terms are not defined or are loosely defined.

It is truly a shame, Mr. Speaker, but not surprising that the majority refused to allow the Members of this House to consider the reasonable bipartisan substitute offered by Congressmen SCHIFF, FLAKE, and INGLIS, two Republicans, two Democrats, and Congresswoman HARMAN.

The gentlewoman said that we ran out, running down the street. There is a time to stop running down the street and think and give us an opportunity to offer alternatives. What a shame that we have not done that. What a shame we still run. What a shame we still hark to politics rather than the policy.

For example, just listen to what William Sessions and William Webster—among others—stated recently.

Recall, Mr. Sessions is the former Director of the FBI during the administration of George H.W. Bush, and Mr. Webster is the former Director of the FBI during the Carter and Reagan Administrations and former Director of the CIA during the first Bush Administration.

They stated (and I quote): "Legal uncertainty is exactly what will result if Congress heeds the President's call to enact legislation that replaces the obligation to use the procedures of the Foreign Intelligence Surveillance Act with broad language about relying upon the President's constitutional authority."

Mr. CONYERS. Mr. Speaker, I yield myself 30 seconds, because it has been stated that we might have been able to prevent the September 11 attack. But a distinguished member of the 9/11 Commission specifically criticized General Hayden for suggesting that the NSA warrantless wiretapping program could have prevented the September 11 attack by stating that it is patently false and an indication that he is willing to politicize intelligence and use false information to help the President.

The Administration's claims that the NSA programs could have prevented the September 11 attacks do not appear to comport with the facts. With respect to Nawaf Alhazmi and Khalid Almihdhar, the September 11th Commission found that the Government had already compiled significant information on these individuals prior to the attacks, writing, ''[o]n May 15, [2001], [a CIA official] reexamined many of the old cables from early 2000, including the information that Mihdhar had a U.S. visa, and that Hazmi had come to Los Angeles on January 15, 2000. The CIA official who reviewed the cables took no action regarding them.'' Under FISA, the Administration could have used the information to seek permission to monitor the suspects' phone calls and e-mails without risking any disclosure of the classified information. It is also not at all clear that warrantless surveillance would have been useful in averting the 9/11 attacks, since the Administration was unable to locate where the two suspects were living in the United States and, according to the FBI ''had missed numerous opportunities to track them down in the 20 months before the attacks.'' Senator Bob Kerrey, who was a member of the 9/11 Commission, specifically criticized General Hayden for suggesting that the NSA warrantless wiretapping program could have prevented the September 11 attack stating: ''[t]hat's patently false and an indication that he's willing to politicize intelligence and use false information to help the President.''

I turn now to the gentleman from Virginia (Mr. MORAN) who has studied this matter and I yield him 2 minutes.

Mr. MORAN of Virginia. I thank my good friend and soon-to-be Chair of the Judiciary Committee.

The Republican leadership should be ashamed of itself to be so readily willing to undermine every American citizen's constitutional protection of privacy in order to give some political help to an endangered Republican Congresswoman from New Mexico.

This bill gives the executive branch unilateral powers to operate outside of the law. The FISA court has worked well for the past 30 years. Through the issuance of warrants, it provides our intelligence agencies expedited access to listen in on private communications but while safeguarding our civil liberties.

The FISA court has refused only four requests for surveillance out of 10,000. Four requests refused out of 10,000. And the Attorney General already has the ability to collect information without a court order in emergency situations. But this bill will retroactively approve the President's wiretapping program, one that our judicial branch has held is illegal. It even allows the Justice Department to coerce telephone companies to give up their records.

To date, the administration has never articulated to Congress or the relevant committees why such expansive new authority is necessary. Congress and the American people deserve an answer as to why we should give this President unilateral authority to erode our constitutional rights.

Mr. Speaker, we believe that every communication to and from al Qaeda should be monitored. In doing so, however, Congress should not give the executive branch a blank check to expose millions of innocent Americans to warrantless surveillance. Let's cast a vote for our Constitution and for our Bill of Rights and reject this bad bill.

The SPEAKER pro tempore. The Chair would advise, the gentleman from Michigan has 4 minutes remaining; the gentleman from Wisconsin has 9 minutes remaining.

Mr. CONYERS. Mr. Speaker, I yield to the gentleman from New York (Mr. HINCHEY) 2 minutes.

Mr. HINCHEY. Mr. Speaker, throughout the course of our history, the most respected and revered Americans have consistently warned us that the greatest threat facing our country was not external but internal. We could not be conquered from abroad, but we do have the capacity to erode what constitutes this country from within. By doing so, we would place ourselves in deep jeopardy; and that is what we see happening here today. We see the erosion of the basic principles of this country, the rule of law based upon our Constitution.

This bill that is before the House now is contrary to the fourth amendment of our Constitution. It provides for illegal surveillance. And when that Constitution was written, it was written based upon the experience of people who saw the effects of these kinds of dictatorial policies in other places around the world. And that is what we are now introducing to our own country.

We have so-called conservative Republicans who are refusing to conserve the basic principles and elements of the Constitution. And the most important part of that document, of course, is the first ten amendments, the Bill of Rights, and what we are seeing here is the erosion of the fourth amendment.

This bill is contrary to every basic principle of our country. If we pass this legislation, we are opening up new opportunities for an increasingly despotic administration to continue to erode the basic freedoms and liberties of the American people. On that basis alone, this bill should be rejected, and it should be rejected enthusiastically by the vast majority of the Members of this House. If we really understand what we are all about, vote this bill down.

Mr. CONYERS. Mr. Speaker, I now yield the balance of our time to the distinguished gentleman from New Jersey (Mr. ANDREWS).

Mr. ANDREWS. Mr. Speaker, if tonight the National Security Adviser walked in the Oval Office and said, ''Mr. President, we believe there is an imminent attack about to occur in the United States, and we want to listen in on a phone call,'' we think there should be no doubt that the President has the authority to say, ''Yes, listen in on that phone call,'' to protect the United States.

But at some point the emergency power ends, and the normal rules of law must obtain. Certainly that point comes sooner than 90 days after the request is made, which can be renewed and renewed and renewed without a decision of an independent Federal judge.

We have a law in place that says that within 72 hours of that emergency our President must go before independent Federal judges in a private, secret proceeding and justify the decision to listen to the calls of Americans or read their e-mails. 99.9 percent of the time since 1978 that has worked. There is simply no record, there is simply no justification to overturn that decision.

This is the most expansive, frightening, and unreasonable expansion of government power since Japanese Americans were unlawfully interred during the Second World War.

One of our friends from the other side of the aisle said that he was offended that liberals had somehow subjected the country to danger. Well, America's first liberal, Thomas Jefferson, would be offended by this piece of legislation, because it sets the outer balance of Presidential power wherever the President chooses to set those outer bounds. This violates Marbury v. Madison, it violates a fundamental tenant of American law, and, for these reasons, this bill should be defeated.

Mr. SENSENBRENNER. Mr. Speaker, I yield myself 2 minutes.

Mr. Speaker, we have got a problem in this country: We are under attack. There are almost 3,000 people that died on 9/11, and we have had to change our entire philosophy on how to deal with this threat.

Before 9/11, we treated terrorist acts as a criminal act. And with a criminal

act, a crime occurs and people are killed, and we send out the police to investigate. Hopefully, they get enough evidence to indict someone, and then the U.S. Attorney's offices will try them and hopefully obtain a conviction, and the judge sentences them, hopefully, for a long, long time.

9/11 proved we can't do that any more, because there are thousands of lives that are at risk. In this age of suicide bombings and suicide attacks, the people who would be prosecuted usually die in the commission of that terrorist act and take thousands of souls, innocent souls along with them. That is why we have to bring up to date a law that was written in the mid-1970s, and we have done this in a constitutional manner.

What we have heard from the other side of the aisle is, no, this isn't good enough and that the perfect is that the enemy of the good. Well, Mr. Speaker, if the perfect defeats the good, then bad will prevail. And if there is, God forbid, another terrorist attack, the blood will be on our hands for not doing the right thing. This bill should be passed.

Mr. Speaker, I yield the balance of my time to the gentleman from Michigan (Mr. HOEKSTRA) and ask unanimous consent that he be allowed to yield portions of that time.

The SPEAKER pro tempore. Is there objection to the request of the gentleman from Wisconsin?

There was no objection.

Mr. HOEKSTRA. Mr. Speaker, I yield myself 6 minutes.

Mr. Speaker, there shouldn't be a controversy about the fact that there are threats to our national security today and that they continue to be more diverse and more complex than ever before.

The Intelligence Committee has worked throughout this Congress to identify and better understand these threats and what steps are necessary to provide the best possible capabilities to our intelligence community, the men and women of our intelligence community, to keep America safe.

The committee recently issued a detailed report on the threats posed by al Qaeda, a hostile regime in Iran. I encourage all members to review them. But you don't need to read the reports to understand the scope, the urgency, and the viciousness of the threats that we face today. The threats are relentless. They are omnipresent.

In the last 2 months alone, a treasonous American appeared in a video prepared by al Qaeda terrorists who have sworn to destroy America and said, ''Either repent of your misguided ways and enter into the light of truth, or keep your poison to yourself and suffer the consequences in this world and the next.''

Jihadists called for the Pope to be ''hunted down and killed,'' merely for reading from a medieval text.

A 66-year-old Italian nun was ruthlessly shot four times in the back and killed while trying to train nurses in Somalia.

Our British allies discovered a horrific and brutal plot, close to fruition, to blow up multiple passenger airliners flying between the United States and the United Kingdom. That likely would have been a more devastating terrorist attack than 9/11. The British Home Secretary has said that they are following at least 20 additional plots.

Press reports have indicated the possibility that the Stalinist regime in North Korea is accelerating its plans to test nuclear weapons, and the rogue president of Iran has reiterated his rights to nuclear technology.

If anyone in the House believes that these threats are not real or they are not serious, I would welcome any information and discussion to the contrary.

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But even if a small portion of these threats have the possibility of coming to fruition, it should not be a serious matter of debate that our country needs to rapidly and effectively bring every intelligence tool to bear to find our enemies, detect and understand their intentions, and thwart their hostile and terrorist acts against our country and our people.

The opponents of this bill say it is ''not necessary.'' I suppose the bill is ''not necessary'' if you do not believe that the threats we face are very real, and very serious. But I believe in the face of such intense and relentless threats this House would be derelict in its duty not to pass this bill that gives us the necessary intelligence tools to defend ourselves.

This bill is intended to modernize one of our primary weapons against terrorists and hostile foreign powers, the Foreign Intelligence Surveillance Act. FISA was passed in 1978. There are some who say it has been updated since, the law has become dangerously obsolete and hopeless as a tool against terrorism. We cannot fight a 21st-century intelligence war against sophisticated terrorist and state enemies with laws designed around the 1970s, around the former Soviet Union and around the bureaucracy associated with the former Soviet Union.

This bill will update the law to allow more flexible and agile intelligence collection against modern communication technologies and streamline the process. We must focus our resources on finding and detecting terrorists, not on having to fill out repetitive, inch-think paperwork to justify what should be an obviously appropriate need to listen to two foreign terrorists communicating in a foreign country.

The outdated law doesn't serve our intelligence interests. It doesn't serve our civil liberties interests. It serves only lawyers and bureaucracy.

This bill will focus the resources of the FISA process where they belong: on effective intelligence collection and protecting civil liberties where Americans have a reasonable expectation of privacy.

There is no ambiguity. This law continues to protect the average American going about their daily business, but does provide for needed surveillance against specifically identified terrorist organizations and spies. This bill would also provide clear authority for our Nation to act in times of armed attack, terrorist attack, or imminent threat.

It will also substantially increase congressional oversight not only of FISA but of all intelligence activities to address important concerns about the separation of powers that have been expressed in this Congress.

I appreciate the strong, close support on this matter by Chairman SENSENBRENNER and the Committee on the Judiciary. I would also like to recognize the hard work and the leadership of the distinguished Chair of the Intelligence Subcommittee on Technical and Tactical Intelligence, HEATHER WILSON, who took on the assignment to address the difficult and complicated issues in this bill. This has not been an easy task. She has worked diligently to address a number of complex, substantive issues and a range of interests within the House.

Mr. Speaker, I believe that this bill is not only necessary but vital to protect our Nation and the American people. The Nation demands that the Congress pass laws to protect our national security. This is what this bill does. I urge all Members to support it.

Mr. Speaker, I reserve the balance of my time.

Ms. HARMAN. Mr. Speaker, I yield myself 5 minutes.

Mr. Speaker, 5 years after 9/11, much remains to do. We still must learn the whereabouts of Osama bin Laden and Zawahiri so we can capture or kill them, achieve intelligence dominance in Iraq so we can protect our forces, penetrate global terror cells to prevent them from attacking us, plug gaps in our homeland security and prevent nuclear material from being acquired by hostile forces bent on using it against America and our allies.

But instead of working on these critical problems, tonight this House is voting to fix something that is not broken, the Foreign Intelligence Surveillance Act. And we are doing this although we know that the other body will not take up this legislation before the recess.

Mr. Speaker, I worked in the White House when FISA was passed. I understand its bipartisan history and the abuses it corrected.

FISA has been modernized 51 times since then. It is now a modern, flexible statute which includes 12 amendments since 9/11 made at the administration's

request. It is a vital tool for the FBI, the CIA and the NSA in their investigations of terrorism and espionage.

All of us support strong tools to intercept the communications of terrorists, track their whereabouts and disrupt their plots. All of us. But there is no evidence that FISA must be totally rewritten in favor of a new regime promoting broad, warrantless surveillance of Americans. None. Yet the White House/Wilson bill does just that.

Mr. CONYERS mentioned that a bipartisan group of former government officials issued a statement opposing the Wilson approach. They wrote: ''This legislation would return a complex subject to the murky waters from which FISA emerged by making . . . the FISA court, or applying FISA in any way, optional rather than mandatory . . . FISA provides . . . clarity and should not be abandoned or amended in ways that render it irrelevant.''

Judge William Sessions, who served as FBI director under Presidents Reagan and Bush, and Judge William Webster, who also served Presidents Reagan and Bush as Director of the FBI and CIA, signed that letter, and they are right.

The White House/Wilson bill muddies the water in two major ways. First, the bill rewrites the definition of electronic surveillance so it applies only when the government intentionally targets a person inside the U.S.

This means that if an American citizen in Los Angeles talks to her sister in Mexico, NSA can listen to their phone calls simply by claiming the target is the sister in Mexico. Nearly all international calls and e-mails of Americans can be intercepted under this bill without a warrant using this new definition of electronic surveillance.

The next loophole is even larger. The White House/Wilson bill authorizes the President to conduct warrantless eavesdropping on the communications of American citizens after an armed attack or a terrorist attack or an anticipation of an imminent threat. This includes domestic-to-domestic phone calls and e-mails. But these terms are not defined. Talk about murky waters.

Imminent threat includes acts that are likely to cause substantial economic damage. Is the threat of a trade war an imminent threat?

To allow 60- to 90-day renewable periods for the President to engage in warrantless surveillance is to gut the careful bipartisanship protections in FISA and grant the President unchecked power.

As the Supreme Court has said: ''A state of war is not a blank check for the President.'' Not for this President, or any future President.

Mr. Speaker, we can do better, and we will have time after this election to do better. The bipartisan substitute which I strongly support is better and would extend from 3 to 7 days the amount of time the NSA has to obtain a warrant in an emergency after surveillance begins, make clear that foreign-to-foreign communications do not require a warrant, even if they are intercepted in the United States, increase the number of FISA judges, and put more resources into expediting the warrant application process, and reaffirm that FISA is the exclusive way to conduct electronic surveillance on Americans.

It includes key provisions of the LISTEN Act, which Mr. CONYERS and I produced in May and which has the support of all nine minority members of the Intelligence Committee.

Mr. Speaker, protecting America from terrorism is our constitutional duty. We all know that it is an election season and a debate on surveillance brings political benefits to some. But that is a terrible reason to legislate. I, for one, do not want to suspend our 217-year-old Constitution tonight for political reasons or no reason at all. Vote ''no.''

Mr. Speaker, I reserve the balance of my time.

Mr. HOEKSTRA. Mr. Speaker, I would like to at this time yield 4 minutes to the gentlewoman from New Mexico, HEATHER WILSON, the chairman of the subcommittee, the author of this House legislation.

Mrs. WILSON of New Mexico. Mr. Speaker, I would like to start out this evening by correcting a few misstatements.

First, the letter that has been referred to a couple of times here by Mr. SESSIONS and Mr. Webster refers to a bill introduced by Senator SPECTER in the Senate which is quite different than the legislation that we are considering here in the House tonight.

Secondly, my colleagues should know that the White House does not approve of this legislation. In fact, they had not even seen the legislation before I introduced it in the House, and my colleagues on both sides of the aisle had that legislation before the administration ever did. This is a House bill and a House product.

I wanted to thank the chairman of the Intelligence Committee and Chairman SENSENBRENNER of the Judiciary Committee, and my colleagues DAN LUNGREN and NANCY JOHNSON for their work and help in crafting this legislation that we are here to consider tonight. I think it is important for all of my colleagues to understand why it is important to move forward with the legislation.

All of us in America remember where we were on the morning of September 11. Most of us remember it in fine detail. But none of us remember where we were when the Canadian Mounties arrested 17 people who had amassed the material for two Oklahoma City-size bombs across the river from Detroit. And very few of us remember where we were when 16 people were arrested in London who intended within days to walk onto American airlines aircraft leaving Heathrow and blow them up over the Atlantic. We don't remember because it didn't happen. It didn't happen because of exceptional intelligence.

This bill strengthens oversight of all intelligence activities and reestablishes that the Congress is a separate coequal branch of government with responsibilities to oversee our intelligence agencies.

It modernizes and simplifies the Foreign Intelligence Surveillance Act that is well overdue. It takes into account 21st-century communications and 21st-century threats that are using those communications against us.

And it sets clear rules for how we should act in the wake of a terrorist attack. There is no broad surveillance authorized by this program; but if a known terrorist calls America, we are going to say you should listen now. Listen now, not after the FBI develops a portfolio, not after legions of lawyers come up with petitions, not after you wake the AG or deputy AG in the middle of the night. Not after we have gotten all of the paperwork done. Listen now. Protect us now because it is reasonable to protect us now.

Some people have said there is a 72-hour emergency provision in FISA, and there is. There is a 72-hour emergency provision, but it requires the AG to have all of the information that would go into a FISA application, and we don't often have that in this war on terrorism.

If we have a number on a cell phone from an al Qaeda agent picked up in Pakistan, we want to be up on that number if the number is in the United States. We don't want to wait for the paperwork to get to the Justice Department. We want the terrorists hiding in their caves wondering if they can use a cell phone rather than Americans using their cell phones to call home one last time.

That is why I would urge my colleagues to support this legislation in front of us this evening.

Ms. HARMAN. Mr. Speaker, we are all for listening now under the law.

It is now my pleasure to yield 2 minutes to the gentleman from Texas (Mr. REYES), a member of the Subcommittee on Oversight.

Mr. REYES. Mr. Speaker, I rise in opposition to the White House/Wilson bill. I want to detect and intercept terrorists before they reach the United States as much as anyone, but I don't want to give the President the ability to trample our Constitution in that process.

I have devoted my entire career to defending our Constitution, first in the military, then in the Border Patrol, and now in Congress. I am not willing to give the President unnecessary unchecked authorities just because it makes good election-year politics.

□ 2100

As a member of both the Intelligence Committee and the Armed Services Committee, I would like to address the failure of this bill to deal with a very specific problem: the President's assertions that the authorization for use of military force gave him the authority to conduct warrantless surveillance of innocent Americans.

I offered an amendment in committee that would have inserted additional language into the White House-Wilson bill to make clear that Congress did not, did not, Mr. Speaker, in passing that authorization, empower the President to engage in warrantless surveillance. Like every amendment offered in the Intelligence Committee, it was voted down in a party line vote. Anything that doesn't square with the President's wish list was unacceptable to the sponsor of this bill. That is disappointing, and that is not bipartisanship.

I take very seriously our obligation to provide the President with the tools that he needs to provide for national security, but I also reject the notion that the authorization for use of military force allows the President to ignore the fourth amendment and conduct warrantless surveillance on American citizens.

To this day, even the Intelligence Committee cannot be sure whether there are other secret programs that the President believes Congress has implicitly authorized. But we can at least make sure that this position, our position, is clear, that he must respect this one.

I still don't think that the authorization for use of military force authorized those things, and I continue to be amazed that the White House, with a straight face, thinks that it did. I am not afraid to stand up for our Constitution. I am not afraid to take a stand and provide the tools to the President either. But this is not the right vehicle. It should be a bipartisan effort.

The White House-Wilson bill is a terrible affront to our constitutional system, and I urge a ''no'' vote.

Mr. HOEKSTRA. Mr. Speaker, I yield 3 minutes to my colleague, Mr. DENT.

Mr. DENT. Mr. Speaker, I rise tonight to speak in strong support of H.R. 5825, the Electronic Surveillance Modernization Act, for four reasons:

First, the act applies only to foreign agents operating in this country. It cannot be used to spy on ordinary Americans. It cannot be used in run-of-the-mill criminal prosecutions. It allows only short-term, let me repeat, short-term warrantless surveillance.

Second, the act makes it easier to conduct surveillance on those foreign agents. Up to now, their communications within this country could not be monitored without FISA approval if it was likely that U.S. citizens were involved in those communications.

Third, and most importantly, the Act makes it easier for us to respond to attack or to the threat of attack. Under current law, warrantless surveillance of foreign agents is permitted only after the U.S. has declared war. Waiting to monitor the activities of foreign terrorists until a formal declaration of war has been declared may be too late. Under H.R. 5825, we can begin such surveillance after an armed or terrorist attack has occurred or, even more significantly, when there is an imminent threat that is likely to cause death or widespread harm.

Finally, the Act gives intelligence authorities the flexibility needed to respond to emergency situations. Under current law, intelligence authorities may conduct surveillance in an emergency for up to 3 days before that agency must go to a FISA court for a warrant. Under H.R. 5825, that period is extended to 7 days, giving authorities more time to respond to that emergency and to gain valuable information that might save people's lives.

For all these reasons, I urge strong support for the Electronic Surveillance Modernization Act.

And, finally, I would like to say maybe, maybe, had this technology been employed before 9/11, maybe those two terrorists out in San Diego who were on the phones to Yemen into a switchboard, a switchboard apparently that bin Laden himself had called into one time, maybe had we been doing this type of surveillance, maybe we could have prevented at least one of those attacks that occurred at the Pentagon on September 11.

For all these reasons, I strongly support the legislation.

Ms. HARMAN. Mr. Speaker, we all wish we had connected the dots prior to 9/11.

Mr. Speaker, I now yield 2 minutes to Representative ESHOO of California, the ranking member on our Subcommittee on Technical and Tactical Intelligence.

Ms. ESHOO. Mr. Speaker, I thank our distinguished ranking member for yielding.

I wish we were debating final passage on a much better bill. Sadly, this bill gives the administration what it wants: a blank check to conduct domestic surveillance without a warrant.

Mrs. WILSON said earlier that this is not a White House bill. Well, if it is not a White House bill, it is a White House dream, because it is a blank check to the President.

Instead of addressing specific problems in the law with tailored solutions, this bill eviscerates the Foreign Intelligence Surveillance Act. Now, that Act is only almost 30 years old. It is not an antique. It hasn't collected dust. It has been revised. It has been amended. It has been brought up to date. But that is not good enough. This bill eviscerates it.

One of the arguments advanced during the debate was that FISA needs to be technology neutral. I agree. We agreed. We went out to NSA. They told us that. We agreed. We offered a tailored solution. Rejected. The whole bill has to be scrapped in order to make changes.

That is not a prudent course. This bill heads us down a dangerous path. The radical changes this bill makes to FISA definitions and standards represent a wholesale rewrite of the law. They nullify FISA by exempting large categories of U.S. person communications from the warrant requirement, and it rubber-stamps all forms of data mining.

The American people want us to protect them, but they don't want us to throw the Constitution overboard. May I remind everyone, with the obligation that we have to the American people when we come here, the oath we take says that we will uphold the Constitution of the United States. This bill does not live up to our Constitution. It gives away the fourth amendment. Members of the House should reject it.

Mr. HOEKSTRA. Mr. Speaker, I would like to yield 2 minutes to one of the newer members of the committee, Mr. ISSA from California.

Mr. ISSA. Mr. Speaker, as the chairman said, I am one of the newer members to the Select Intelligence Committee. But I am not any longer one of the newer Members to Congress, because I was here on September 11. I saw as we evacuated the Capitol. I saw as the Pentagon burned. I saw as America rallied, asking us to make sure this didn't happen again.

Today, we are considering some commonsense, limited reforms that are necessary. They are necessary because, on both sides of the aisle, we want to make sure that we codify in law what will be done, that we minimize executive order but maximize the ability of the executive branch to meet its obligations to the people.

H.R. 5825, if it weren't the eve of election, would clearly be just another commonsense reform done on a bipartisan basis. But we are in the midst of an election.

I have been on the Judiciary Committee since I came as a freshman 6 years ago. I am very concerned about civil rights, about protecting Americans' civil rights. And if I could just take a minute to get beyond the partisanism for a moment, I am also an Arab American. I am exactly the group that is likely to have to think about is my call to Yemen or to Lebanon or to Jordan or any of the other expanded places that I have family and friends, is that going to be potentially monitored? I have thought about that. I have soul searched it for myself and for many millions of people like myself in the United States who are Americans born and raised but, in fact, have friends and family abroad.

I am comfortable with this bill. I am comfortable with the parts that are unclassified, and I am comfortable with what I have learned on a classified basis. That doesn't come easy, but I have made the effort to do so. I am supporting this bill because it is the right thing to do to make all Americans safe, and it is the right thing to do to make sure that we never again have to apologize to the American people for September 11.

Ms. HARMAN. Mr. Speaker, it is now my pleasure to yield 2 minutes to Representative HOLT of New Jersey, ranking member on our Subcommittee on Oversight.

Mr. HOLT. Mr. Speaker, I thank the gentlewoman from California for yielding.

Mr. Speaker, this is not a debate about whether we should be wiretapping al Qaeda. This is a debate about whether intelligence agencies should be guided so that their efforts are most effective in protecting Americans from terrorism.

The President has been sending intelligence agencies on fishing expeditions. Now, of course, when al Qaeda calls, we should be listening. And under FISA we can and we do. But the President wants to turn a vacuum cleaner on the communications of innocent Americans, with no checks and balances, trampling the rights of many in the search for a few. We need to bring some discipline to our electronic surveillance with checks and balances, checks so that we don't make dreadful mistakes.

Our history is replete with mistakes, when we were sure, absolutely certain, that we knew who the enemies were: Martin Luther King, Jr.; Paul Robeson; Brandon Mayfield, an innocent lawyer in Portland; and on and on. The White House-Wilson bill, in the name of modernization, is extending the President's vacuum cleaner.

The President under FISA has the power he needs within the legislative framework that will focus his power on terrorists, not on innocent Americans. Our government is strongest when all three branches of government work together, and we are weak when the President tries to act alone and in secret. This President has been acting alone and in secret, and that is why the fight against terrorists has been going so badly.

This President, any President, needs the supervision of Congress and the courts.

Mr. HOEKSTRA. Mr. Speaker, I yield 3 minutes to a gentleman from the committee, Mr. TIAHRT.

Mr. TIAHRT. Mr. Speaker, I thank the gentleman from Michigan for yielding.

Mr. Speaker, Americans live under the U.S. Constitution. As Members of Congress, we swear an oath to uphold the United States Constitution. It means something to be an American because we believe in our country, we believe in our people, and we believe in our constitution.

In the New Testament, Paul, the Apostle, once was taken captive and held for the crime of spreading the Gospel of Jesus Christ. He responded by saying, ''I am a citizen of Rome.'' And, as a citizen of Rome, he was granted certain privileges because it meant something to be a Roman citizen.

Well, today, we are in the struggle brought on to us by the terrorists of Islam. It is a war that we did not choose. It was a war that was declared against us as Americans, against our people, against our Constitution.

Today, we are now deciding how do we treat those who are choosing to carry out a war against us, non-U.S. citizens who are choosing to take us to task for what we believe and who we are. In this conflict, we have to decide how we are going to try to find these terrorists.

If in a conflict a certain laptop is captured in the fleeing from a conflict, when a member of the al Qaeda leaves and on that laptop we happen to find some information, including phone numbers, should we check those phone numbers to see if they are calling from Pakistan or Afghanistan or Iraq or elsewhere on the globe into the United States? Should we check to see if there is a terrorist plot being formulated against the citizens of the United States? Should we give them the same rights as we have as American citizens?

Well, we have gone over and above the way we treat our prisoners. How do the members of al Qaeda treat us as prisoners? How do they treat our soldiers? They have no prisoners because, when they capture one of our troops, they are executed. They are either beheaded or they get shot in the back of the head.

In our attempts to keep this country safe, we need to remember who it is that we are dealing with. And when they do call in, what type of process should we go through to keep this country safe? It is my belief that this legislation has the checks and balances that protects the Constitution. It has the same safeguards that we all hold dear for the citizens of this country, and yet it gives us the tools necessary to keep this country safe, the same tools we use to capture people who push drugs on our kids, the same tools we use to keep child pornographers from taking advantage of our children.

□ 2115

The same tools we need to use to keep this country safe by bringing terrorists to justice, because I guarantee you, if they have the opportunity and the means, they will take American lives.

So we must use this tool, as laid out in this legislation, to make sure that we can keep this country safe, to make sure that we can, yes, uphold the Constitution, but use all tools necessary to make sure that we bring these criminals, these terrorists, these people who want to harm us to justice.

Ms. HARMAN. Mr. Speaker, how much time remains?

The SPEAKER pro tempore (Mr. BASS). The gentlewoman from California has 3¾ minutes, and the gentleman from Michigan has 4½ minutes.

Ms. HARMAN. Mr. Speaker, I yield 2 minutes to the gentleman from Massachusetts (Mr. TIERNEY).

Mr. TIERNEY. Mr. Speaker, I thank the gentlewoman from California, and I associate myself with the remarks that she made at the beginning of this proceeding here this evening.

Mr. Speaker, the President's warrantless wiretapping program should have been conducted under the Foreign Intelligence Surveillance Act provisions. The threat of terrorism demands careful response.

The government has to have strong powers, including the authority to carry out various forms of electronic surveillance. FISA, as was amended over 20 times, updated, provides those powers. People want to be protected, but they do not want their legislators in an election year to just start handing away their constitutional rights and privileges.

I agree with the assessment of one of the witnesses before our committee: such a complex and proven statute as FISA should be amended only with great caution and only on the basis of a public showing of need.

This administration's concerns about FISA were narrow and they were few and could have been resolved with clarifications. But we proposed bipartisan legislation that would take care of it. This majority chose not to take that legislation up.

Instead, they have proposed this broad and sweeping and over-reaching bill that, regardless of what my colleagues may say on the other side, is a dream of the White House, and Mr. CHENEY and Mr. Bush.

To protect the constitutional rights and to ensure the effective application of government powers, government surveillance should be focused. That focus can best be achieved through a system of checks and balances that are implemented through executive but also legislative and judicial review.

The bill before us effectively eliminates review. The bill before us simply gives the executive carte blanche to intercept communications of United States citizens without making adequate attention to preserving the liberties and civil rights that are embedded in our Constitution.

It is unnecessarily broad and it is harmful for the interests of Americans. In making sure that the government has all of the powers that it needs, we have to have a law that ensures citizens their rights will be adequately protected even as their safety is secure.

Therefore, this bill fails because it does not allow for essential protections. Except in emergencies, there must be prior judicial approval. Congress should be fully informed of all surveillance activity and carefully oversee it.

Any repeal of FISA's exclusivity provision is wrong, Mr. Speaker. It would turn back the clock 30 years. There is a reason FISA was passed into law, and those reasons exist today.

It is clear, after having listened at classified and open hearings, that the President's program of warrantless wire tapping should have proceeded to intercept communications only under the Foreign Intelligence Surveillance Act's, FISA's, provisions. The Threat of Terrorism demands a careful response.

The Government must have strong powers, including the authority to carry out various forms of electronic surveillance. Still, to protect Constitutional rights and to ensure effective application of those powers, government surveillance must be focused. That focus can best be achieved through a system of checks and balances implemented through executive, legislative and judicial review.

I agree with the assessment of one of our witnesses with a Policy and Technology background: Such a complex and proven statute as FISA should be amended only with great caution and only on the basis of a public showing of need.

After all this time since the 12/05 disclosure of the program the Administration has made public only limited, quite narrow arguments that FISA is in need of further amendment:

(1) The Attorney General's explanation of problems involving the timely invocation of FISA emergency exception. In other words, in some cases the process was making it difficult to get a warrant application processed within the 72 hours allowed by the statute after interception commenced . . .

Those problems, evidence shows, are due in part to the paperwork burdens created by the Executive Branch and perpetuated by this Administration.

That problem it is largely self-inflicted and is not due to any delay by the Foreign Intelligence Surveillance Court.

The remedy—direct the President to report to Congress on the need for more resources, Asst. AG's, etc., and make any legislative and procedural changes that are necessary (i.e. if more than 72 hours post-emergency intercept needed for warrant).

The Harman-Conyers bill addresses these matters, though it is not even actually necessary to pass an amendment or a law to meet these goals.

(2) A concern was put forth that a court order is necessary for the interception of foreign-to-foreign communications of non-U.S. persons that happen to pass through the U.S., where they can be more readily accessed by U.S. government agencies.

In other words, some in the agency were interpreting the law to require a warrant even if U.S. persons weren't involved but the communication passed through the U.S. Many experts believe that to be the wrong interpretation. Still, the remedy—presumably a narrow clarification could be crafted. Clearly, any updating of FISA can be done in a way that is Constitutional and responsive to the Executive branch's needs.

Measures before this body purporting to simply give the Executive carte blanch to intercept communications of U.S. citizens without making adequate attention to preserving the liberties and civil rights imbedded in our Constitution are unnecessarily broad and harmful to the interests of Americans.

In ensuring that the government has all the powers it needs, we must have a law that assures citizens their rights will be adequately protected even as their safety is secured.

Therefore, any amendment or bill must provide that: Except in emergencies—there must be prior judicial approval;

Congress must be fully informed of all surveillance activity and carefully oversee it; Interceptions of contents of communications of U.S. persons must be focused on particular individuals suspected of being terrorists or particular physical or virtual addresses used by terrorists; The threshold should require that there is probable cause to believe the target is a terrorist and that the intercept will yield intelligence; and

FISA must be the exclusive means to carry out intelligence surveillance within the U.S. Any repeal of FISA's exclusivity provision is wrong. It would turn the clock back 30 years and do away with legislative oversight and judicial review. There were valid reasons that FISA was passed. Those reasons still exist.

Mr. HOEKSTRA. Mr. Speaker, I yield 2 minutes to the gentlewoman from Connecticut (Mrs. JOHNSON).

Mrs. JOHNSON of Connecticut. Mr. Speaker, I appreciate the gentleman yielding to me. It is quite stunning that my colleagues on the other side of the aisle describe this as a broad, sweeping authority, and that under the NSA program, somehow the President can go on fishing expeditions.

The NSA program applies only to international calls and only when those calls involve the telephone number of a known al Qaeda operative. So if it is someone from Hezbollah or some other group, you cannot do it. It has to be al Qaeda.

Well, I will tell you, if a call is going from a known terrorist al Qaeda operative in Iraq or Afghanistan or Pakistan to America, I want to know. I want to know what they are saying. If there is anything London taught us, it is that we need to know. And we need to know to be able to stop actions from happening that threaten and endanger our people.

The second thing is, the persistent, repeated claim on the other side of the aisle that somehow a FISA court application is a snap of the fingers. Brian Cunningham, former CIA official and Clinton-appointed Federal prosecutor: NSA cannot lawfully under FISA listen to a single syllable until it can prove to the Attorney General, usually in writing, that it can jump through each and every one of FISA's procedural and substantive hoops.

And those procedural and substantive hoops mean that the operative at the National Security Agency has to decide there is an issue, has to put it in writing. The lawyers of NSA have to agree. They have to provide paperwork that goes to the lawyers of the Department of Justice.

I mean, there are lots of steps to this process. And to imagine that this can be done rapidly, it often takes weeks from what I have heard in briefings. It can take longer than that. To believe that this can be done in 72 hours and protect our people is to close your eyes to the reality of the terrible danger that terrorism possess to people in America and throughout the world.

Ms. HARMAN. Mr. Speaker, I yield myself 30 seconds to respond to the prior speaker, and then I will yield the remainder of our time to the minority leader.

Mr. Speaker, I am glad that Mrs. JOHNSON brought up this question of procedural and substantive hoops. This is a claim that she has made before. And I just want to point out to my friend that those procedural and substantive hoops, relating to emergency FISAs, are imposed by the Justice Department and the NSA, not by the law.

No one here wants there to be procedural and substantive hoops involved in getting emergency warrants. All of us want to listen if there is an emergency and get the warrant later.

Mr. Speaker, I yield the balance of our time to the gentlewoman from California (Ms. PELOSI), my predecessor as ranking member on the Intelligence Committee and the leader of the minority.

Ms. PELOSI. Mr. Speaker, I thank the gentlewoman for yielding. I thank her for her leadership and her clarity on this very important issue. And clarity indeed is needed here.

Mr. Speaker, each of us wants the President to have all of the intelligence necessary to protect our country and to protect the American people. We spend billions of dollars every year to make sure that the most reliable intelligence possible is available in a timely fashion to the President and our military commanders.

We know that intelligence collection can involve highly intrusive methods. That is the reality of intelligence gathering. But when those methods are employed against people within the United States, it is imperative that they comply with the Constitution and they be subjected to regular and thorough congressional and judicial oversight.

For 28 years, the statutory basis for electronic surveillance for intelligence purposes has been FISA, the Foreign Intelligence Surveillance Act. The reason FISA exists was because in 1975 the Church Committee found numerous instances of warrantless electronic surveillance and physical searches of United States citizens who were not spies, but who advocated unpopular political views.

FISA was a compromise designed to prevent overreaches unrelated to our national security while clarifying when warrantless surveillance could be used for domestic security purposes. The FISA process has worked well for nearly three decades, and that success is due in part to the fact that we have been able to modify it as the needs and technologies change. In fact, FISA has been modified 51 times since 1978.

FISA can be changed. It can be updated. It can be broadened or amended, but it should not be circumvented. And that is what this bill does tonight. It tries to circumvent FISA law and our Constitution.

Last December, President Bush confirmed press reports that he had permitted warrantless surveillance to occur outside the FISA process, and that he had both inherent and statutory authority to do so. FISA is and must remain the exclusive means for authorizing warrantless surveillance of people in the United States for intelligence purposes.

This exclusivity provision is what allows for judicial and congressional oversight and protects all of us from abuse. Unfortunately, the bill now under consideration eliminates that protection. Instead, it accepts the President's argument that there are circumstances in which he needs to be able to order surveillance without using the FISA process and then provides him with the authority to do so.

If this bill passes, rather than being the exclusive means for authorizing surveillance, FISA would be just one option. The result would be less oversight and fewer checks and balances and more abuses of executive power.

I heard our colleagues on the other side say things as ridiculous as this, and they know better. In fact they know what they are saying could not possibly be true. They are saying that if we pick up the phone and we hear a terrorist on the line, Democrats want us to hang up.

You have to really be very kind not to attribute some very sinister motivation to anyone who would say such a thing. Of course, that is not the case. And that is what is so important about the FISA, because it does allow our collectors to listen in on those conversations while they get a FISA, while they can be brought under the law through FISA.

That is the beauty of the motion to recommit that Mr. SCHIFF, Mr. FLAKE, Ms. HARMAN, and others will be putting forth later this evening. It simply says that the vote to go into Afghanistan did not give the President the authority to avoid the law, and undermines the Constitution.

It says that FISA can be updated. It provides funds, more funding for the implementation of FISA. It extends the number of days under which collection may be done without a FISA warrant. It, in fact, modernizes FISA in a way that is appropriate, but maintains the exclusivity which is central, central to the President operating under the law.

The combination of the military commission bill passed yesterday and this bill would be an unprecedented expansion of executive authority into some of the most fundamental liberties enshrined in our Constitution: the right to privacy and the right to due process of law.

These are not merely academic, legal, or technical matters. These are rights. These rights are at the heart of what makes us unique as a Nation, and I believe they will be diminished by the passage of these bills.

The President claims that inherent in his office is all of the authority needed to conduct warrantless electronic surveillance. Rather than enshrine in law powers the President claims he already holds, we should await the conclusion of judicial review of the President's domestic surveillance program.

At that point, we can determine if additional adjustments to FISA are necessary. We do not need to pass this diminishment of privacy in our country tonight.

Of course, that would require something that the administration has thus far been unwilling to allow, congressional hearings on the domestic surveillance program.

Congress needs answers to questions that remain unresolved to the unsatisfactory and sterile briefings provided thus far by the administration. Until that happens, we should be reaffirming the exclusivity of FISA and our commitment to providing whatever additional resources and procedural enhancements might be necessary to facilitate its operation.

That is exactly what the bipartisan Schiff, Flake, Harman, Inglis amendment would do. The Republican leadership should have ensured that the House had a chance to consider the amendment today. That would have been the fair thing to do. Instead, we have had to force the issue through a motion to recommit. That motion is the only, only initiative that stands between us and a vote on a bad bill.

I urge the adoption of that motion in the spirit of protecting the American people, of expanding the time allowed to collect without a FISA warrant, and to do so with exclusivity and under the law to honor our oath of office that we take to uphold the Constitution.

□ 2130

Anyone who says that we want to hang up on Osama bin Laden demeans the debate, cannot possibly be serious and owes the American people better.

Mr. HOEKSTRA. Mr. Speaker, I yield myself the balance of the time.

Mr. Speaker, we are a Nation at war. All we need to do is take a look at what the leaders of radical Islam are saying. Bin Laden has said that if by the grace of God he would be able to have access to nuclear weapons, he would use them.

All you need to do is take a look at what radical Islam is doing. Just five short weeks ago, they once again had a plan to attack America in a horrific way, multiple planes crashing into the Atlantic Ocean at the same time.

This is a global war. The attack that had its home in the U.K. is directed out of Pakistan. It is targeted at America. There are operatives throughout the Middle East, north Africa, Europe, the Netherlands, Canada, Australia. It is a global and dangerous enemy. It is a decentralized, entrepreneurial organization that is very, very dangerous.

We are on the offense. We are taking the fight to the radical Islamists wherever they may be.

This bill is about making sure that the men and women in our intelligence community have the tools to fight this kind of an enemy. It is time to update FISA. It is time to give the men and women in the intelligence community the tools for them to fulfill the job that we have asked them to do, which is to protect America, to keep us safe.

Vote for this bill. Vote for a modernization.

Mr. MACK. Mr. Speaker, I rise today to express my thoughts and concerns regarding the Electronic Surveillance Modernization Act (H.R. 5825). As a strong conservative, I believe in national security, independent courts that follow the law, strong legislative oversight, and individual responsibility.

While this legislation is an important and effective tool for combating and winning the war on terrorism, I believe it is the duty of this body to err on the side of freedom and the constitutional protections the American people cherish and deserve.

The history of a government with unchecked power is a history of tyrannical governments. Unchecked power caused civilized people to write the Magna Carta, the Declaration of Independence, the United States Constitution, and the Bill of Rights. At its crux, the Constitution ensures the separation of powers and confirms the Founding Fathers' belief that power corrupts, and absolute power corrupts absolutely.

Five years ago, this Nation suffered the deadliest terrorist attack in our Nation's history. This attack was an act of war and Congress came together to provide law enforcement and intelligence officials with sweeping powers to increase intelligence-gathering abilities and information sharing in the name of fighting terrorism. This was a wise and prudent choice. However, due to the legitimate concerns raised about the powers we put into the hands of government and the need to be mindful of the liberty we are sworn to uphold, Congress remained vigilant in maintaining appropriate checks and balances.

Under this Electronic Surveillance Modernization Act, the Terrorist Surveillance Program (TSP) will continue to exist alongside the wiretapping regime established by this Act.

You will have two programs—one on the books and the other not. While I strongly support the War on Terror and our president, this legislation would allow any American president to turn to the TSP if this Act unduly constrains their efforts. This is not checks and balances, but rather, an end-run around the basic principles of the rule of law.

This legislation allows any president virtually unlimited power to intercept the communications of every American on his word alone. For example, the bill eliminates FISA's warrant requirement for electronic surveillance whenever the president certifies that the United States has been the subject of a terrorist attack and identifies the terrorist organizations or their affiliates believed to be responsible. But, as we all know, for the indefinite future, the United States will be targeted by terrorists and the enemies of freedom. Further, the bill allows for the surveillance and physical searches of any American homes or businesses for 90 days if there is an ''armed attack'', a term undefined in the bill, against the United States territory.

Some have characterized the TSP as an irresponsible reaction. While I support intercepting terrorists' communications, Congress must ensure that checks and balances are included and proper oversight is maintained. But this legislation will prevent Congress from exercising that critical oversight.

History tells us that in times of war or conflict, government is all too willing to ask its citizens to sacrifice liberty in the name of security. America witnessed it during World War II with the immoral internment of Japanese Americans. But our children and grandchildren deserve a future that cherishes both their security and their liberty, not one at the expense of the other. It is our duty to protect that balance and I can only hope that when this legislation emerges from conference and is enacted into law that we will have fulfilled that responsibility.

President Reagan once said, ''Freedom is a fragile thing and is never more than one generation away from extinction. It is not ours by inheritance; it must be fought for and defended constantly by each generation. . . .''

Mr. Speaker, the War on Terror must be fought and it will be won. But, as we prosecute this war, we must understand that it is our generation's time and responsibility to defend freedom. While our brave young men and women in the military are fighting for liberty around the globe, this Congress must honor their sacrifice and the cornerstone of the United States by defending freedom here at home.

Mr. BLUMENAUER. Mr. Speaker, the Electronic Surveillance Modernization Act, H.R. 5825, seeks to expand the administration's power by giving the President greater flexibility over a program that he has already abused. If our experience with this administration proves anything, it is that reducing congressional oversight would be a mistake.

Less than a year ago the American public learned how the president had blatantly disregarded the Foreign Intelligence Surveillance Act (FISA) by authorizing a warrantless eavesdropping program on American citizens. After this program was uncovered, we discovered that the administration had authorized the National Security Agency to build a massive phone records database. Now the President asks that we pass legislation to legitimatize illegal activities that have already occurred and the current Republican leadership is all too willing to comply.

This legislation does not solve any problems or make our country more secure, it simply grants the administration the authority to implement more programs that violate the civil rights and liberties of American citizens.

We must hold this administration accountable for its actions and not retroactively approve an illegal program. Surveillance activities must be done consistent with our Constitution and our laws, and should protect both the American people and our freedoms.

Mr. ETHERIDGE. Mr. Speaker, as a member of the Committee on Homeland Security, I rise in opposition to H.R. 5825, the Electronic Surveillance Modernization Act. I strongly support aggressive action to protect America from the threat of terrorism. We must do whatever it takes to defeat our terrorist enemies and defend our core principles. But this bill is unnecessary and goes too far and empowers unaccountable bureaucrats to violate the rights of law-abiding Americans.

Since the terrorist attacks on our nation on September 11, 2001, I have consistently supported the modernization of the Foreign Intelligence Surveillance Act (FISA) through my votes in favor of the USA PATRIOT Act and its reauthorization (P.L. 107–56, P.L. 109–177), the Intelligence Authorization Act for Fiscal Year 2002 (P.L. 107–108), the 21st Century Department of Justice Appropriations Authorization Act (P.L. 107–273), and the Department of Homeland Security Act (P.S. 107–296).

FISA is a modern, flexible statute that is a vital tool for the FBI, CIA and the NSA in their investigations of terrorism and espionage. This law provides intelligence and law enforcement officials the authority to monitor the communications of those who would do us harm while protecting the privacy and civil liberties of U.S. persons as guaranteed by the Constitution.

H.R. 5825 is an ill-conceived, election-year ploy that would expand executive wiretap authority to unprecedented levels and expose the daily, innocent communications of American citizens to review by faceless bureaucrats.

Mr. Speaker, we must provide our law enforcement officials with the tools and resources they need to plug gaps in our homeland security and to penetrate global terror cells, but the House Republican leadership attempts to weaken the U.S. Constitution by lowering the standard of the Fourth Amendment to score political points. I support the bipartisan Harman-Flake alternative that represents a balanced approach to defeat the terrorists while safeguarding our rights.

Mr. SMITH of Texas. Mr. Speaker, I support this legislation.

Those who oppose the Terrorist Surveillance Program say that it violates civil rights, that it sends the wrong message to U.S. citizens and foreign nations, and that it should be stopped.

To the contrary, the Terrorist Surveillance Program protects Americans' lives and sends terrorists the message that we will use every legal means possible to defend ourselves. It should be continued, not eliminated.

Before 9/11, information sharing between law enforcement and intelligence officials was almost non-existent.

The hands of our criminal investigators and intelligence investigators were tied and they were unable to alert each other to terrorist threats.

After 9/11, that was changed.

Now some want to halt government programs that help intelligence officials figure out who wants to harm us.

We cannot afford to return to a pre-9/11 status. We cannot dismiss the possibility of a terrorist attack. We cannot throw away the tools we need to protect us.

And the Terrorist Surveillance Program is one of those tools.

The ''Electronic Surveillance Modernization Act'' allows the President to continue the Terrorist Surveillance Program.

Let's keep our guard up and our defenses strong, and support this legislation.

Mr. CANNON. Mr. Speaker, the debate before us centers on what the legitimate roles of Congress and the Executive Branch are in terms of foreign policy and intelligence gathering matters.

It is an issue that strikes at the heart of the Constitution.

I The Constitution leaves little doubt that the President is expected to have the primary role of conducting foreign policy, but Congress has a role and the debate today indulges us in defining that role.

The language that I offered at the Judiciary Committee and is included in the Substitute Amendment does not delve into the Constitutional relationship between the Congress and the Executive.

The language deals with an issue of fairness.

It deals with the issue of whether individuals or companies that comply with government orders are liable to third parties for following these orders.

The purpose of this language is to eliminate the 60 plus lawsuits that have been filed because companies complied with government orders.

Absent an effective immunity provision that allows a company to avoid these legal quagmires, an individual or company will be reluctant to cooperate with any authorized government surveillance program and that will severely undercut this country's terror-fighting capabilities and the safety of our constituents.

Should these claims proceed to judgment, the financial liabilities could add up to hundreds of billions of dollars—enough to destroy any industry.

Although I do not believe the suits will succeed the defense costs alone will be considerable.

But what is worse is the chilling effect on compliance for future requests.

We can argue what the law *is* but we all agree that we should encourage compliance with our laws.

The language in the Substitute amendment will separate questionable litigation from a national security imperative and focus our attention where it should be, which is what is Constitutionally allowed.

If the overall program is illegal or unconstitutional that is for us and the Courts to decide.

Judges, who are sought out in a forum shopping frenzy, should not issue decision's that could undermine our protection from a future terrorist attack and reveal classified sources or methods.

If you oppose the program administered by this Administration; if you don't believe in the Constitutional theories regarding the Executive's authority—that is an issue for discussion; that is our right as Members of Congress to debate.

But it is irrelevant to Section 10 which will merely provide liability protections for compliance with a certification from the Attorney General.

I urge support of this legislation.

Mr. UDALL of New Mexico. Mr. Speaker, I rise today in opposition to H.R. 5825, the Electronic Surveillance Modernization Act.

The bill before us today allows this Administration to continue its program of unwarranted surveillance of Americans, in direct violation of the rights guaranteed to us by the Constitution and by statute. Mr. Speaker, proponents of this legislation claim that there is no violation or question about the program's legality. If that is, in fact, the case, then why are we considering legislation with the sole purpose of legalizing the President's, and the NSA's, actions?

Last December, we learned that President Bush authorized the National Security Agency to spy domestically, without obtaining any warrants. Since that time, we have learned very little about the program, largely due to the Administration's unwillingness to properly inform Congress about the programs components, scope, or its budget. The little we do know, however, is that through this program, hundreds, and possibly thousands, of Americans have had their telephone conversations and emails monitored without any judicial supervision. The Majority has failed in its oversight responsibilities. Nevertheless, we are preparing to pass legislation that legitimizes this little understood, but still extremely troubling program.

H.R. 5825 allows the President to authorize warrantless surveillance of communications of ordinary Americans without first obtaining approval from the FISA court. They say they need this because our laws are out of date. This is false and untrue.

Current law (FISA) allows the President to act in emergencies and when there is a declaration of war by Congress. The proponents have not come forward with evidence that the current law is not working or failing to protect us.

Congress must use the checks and balances placed in our Constitution to curb the Administration's actions. Congress needs to assert its oversight responsibility and fully evaluate this NSA program. And the Administration needs to stop its attempts to extend its power and authority, at every available opportunity, by circumventing our nation's laws. Despite what this Administration would have us believe, securing our nation from all enemies both foreign and domestic can be achieved without violations of our civil liberties and right to privacy. I urge my colleagues to vote no on this misguided and ill-advised legislation.

Mr. STARK. Mr. Speaker, I rise against the Electronic Surveillance Modernization Act (H.R. 5825) because I swore to uphold the Constitution and I will not vote to provide exceptions to it. The Fourth Amendment to the Constitution reads: ''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.'' In other words, you have to get a warrant any time you spy on an American. That is the entire text of the Amendment. It doesn't say ''unless President Bush thinks the person is a terrorist,'' ''except in cases where it's inconvenient to file the paperwork,'' or even ''with limitations as defined by Congress.''

Realizing the urgent nature of some national security investigations, federal law permits wiretaps without warrants in emergencies as long as court approval is obtained within three days. If the surveillance involves only communications of agents of foreign powers, the government can conduct warrantless surveillance for up to a year. These warrants are not difficult to obtain. Since 1978, when the law was enacted, the Foreign Intelligence Surveillance Act Court has approved more than 18,000 national security warrants. Only five have been turned down. But current law isn't good enough for the President. He wants to do what he wants, when he wants, without telling anyone.

This President violated the Constitution. Rather than hold him accountable, we are going to approve of his despotic behavior. Under this legislation, the President can conduct warrantless surveillance of Americans any time he declares there is an ''imminent threat'' likely to cause death or widespread harm. Good luck finding a time when this President, or any President for that matter, doesn't claim there's an imminent threat.

Mr. Speaker, in this Congress alone, you have attempted to close the halls of justice to detainees, gun victims, religious minorities, fast food consumers, asylum-seekers, injured patients, and now, anyone spied on by their own government. We've gone from a nation of laws to a nation of exceptions. Unless my colleagues want a nation of, by, and for the Protestant, thin, suspicionless white male, I urge them to join me in voting no.

Mr. PAUL. Mr. Speaker, Congress is once again rushing to abandon its constitutional duty to protect the constitution balance between the executive, legislative, and judicial branches of government by expanding the executive's authority to conduct warrantless wiretaps without approval from either a regular federal court or the Foreign Intelligence Surveillance Act (FISA) court. Congress's refusal to provide any effective checks on the warrantless wiretapping program is a blatant violation of the Fourth Amendment and is not necessary to protect the safety of the American people. In fact, this broad grant of power to conduct unchecked surveillance may undermine the government's ability to identify threats to American security.

Instead of creating standards for warrantless wiretapping, H.R. 5825 leaves it to the President to determine when ''imminent'' threat requiring warrantless wiretapping exists. The legislation does not even define what constitutes an imminent threat; it requires the executive branch to determine when a threat is ''imminent.'' By passing this bill, Congress is thus abdicating its constitutional role while making it impossible for the judiciary to perform its constitutional function.

According to former Congressman Bob Barr, thanks to Congress' failure to establish clear standards for wiretapping, under H.R. 5825 ''. . . simply making an international call or sending an e-mail to another country, even to a relative (or a constituent) who is an American citizen, will be fair game for the government to listen in on or read. Moreover, this legislation allows the government to conduct secret, warrantless searches of American citizens' homes in a broad range of circumstances that are essentially undefined in the legislation.''

Mr. Speaker, I do not deny that there may be certain circumstances justifying warrantless wiretapping. However, my colleagues should consider that current law allows for warrantless wiretapping in emergency situations as long as a ''retroactive'' warrant is sought within 72 hours of commencing the surveillance or the warrantless surveillance commences within 15 days after Congress declares war. If there are legitimate reasons why the current authorization for warrantless wiretapping is inadequate, then perhaps Congress should extend the time allowed to wiretap before applying to the FISA court for a ''retroactive'' warrant. This step could enhance security without posing the dangers to liberty and republican government contained in H.R. 5825.

The requirement that, except in extraordinary circumstances, a warrant be obtained from the FISA court does not obstruct legitimate surveillance efforts. It is my understanding that FISA judges act very quickly to consider applications for search warrants, even if the applications are faxed to their houses at three in the morning. Applications for FISA warrants are rarely rejected. In 2005, the administration applied for 2,074 warrants from the FISA court. Of those 2 where voluntarily withdrawn and 63 where approved with modifications; the rest were approved. The FISA court only rejected four applications for warrants in the past four years; and one of those rejected warrants was subsequently partially approved.

Warrantless wiretapping may hinder the ability to identify true threats to safety. This is because experience has shown that, when Congress makes it easier for the federal government to monitor the activities of Americans, there is a tendency to collect so much information that it becomes impossible to weed out the true threats. My colleagues should consider how the over-filing of ''suspicious transaction reports'' regarding financial transactions hampers effective anti-terrorism efforts. According to investigative journalist James Bovard, writing in the Baltimore Sun on June 28, ''[a] U.N. report on terrorist financing released in May 2002 noted that a 'suspicious transaction report' had been filed with the U.S. government over a $69,985 wire transfer that Mohamed Atta, leader of the hijackers, received from the United Arab Emirates. The report noted that 'this particular transaction was

not noticed quickly enough because the report was just one of a very large number and was not distinguishable from those related to other financial crimes.'" Congress should be skeptical, to say the least, regarding the assertion that allowing federal bureaucrats to accumulate even more data without having to demonstrate a link between the data sought and national security will make the American people safer.

In conclusion Mr. Speaker, because H.R. 5825 sacrifices liberty for the illusion of security, I must oppose this bill. I urge my colleagues to do the same.

Ms. WOOLSEY. Mr. Speaker, I rise tonight in great sadness. It's the run-up to the fall elections, and what has the Republican Majority pushed through the Congress?

Torture, a subversion of the Geneva Conventions, and domestic spying. The Administration claims to be spreading democracy throughout the world. How about some democracy and freedom here at home?

Shame on this Congress for trampling civil rights at home and abroad. We are supposed to stand up for freedom and liberty and the rights of the most vulnerable. Instead we are spying on Americans?

Mr. Speaker, this is not the country our Founding Fathers dreamt of. And it certainly is not the country I want to hand down to my grandchildren.

This bill is not making us safer—it is making us less free.

I urge my colleagues to stand up for freedom. I urge my colleagues to vote no!

Mrs. MALONEY. Mr. Speaker, I rise today in opposition to H.R. 5825, the "Electronic Surveillance Modernization Act."

Yet again, the Republican Majority has brought legislation to the Floor that disregards the rights of American citizens. H.R. 5825 would give the executive branch broad discretion to eavesdrop on Americans without judicial review or sufficient oversight from Congress.

Since the terrorist attacks of 9/11, we have learned more and more about the secret programs run by this Administration that violated long-standing U.S. laws and policies. I know that we all agree that obtaining intelligence to prevent terrorist attacks is a high priority. However, innocent Americans should not have to worry that their phones have been tapped or their emails are being read.

It is a shame that the bill before us today leaves out the sensible provisions of the bipartisan Schiff-Flake-Harman-Inglis substitute which would require congressional oversight of surveillance programs, extends from 72 hours to seven days the amount of time allowed to initiate surveillance in an urgent situation before going to the FISA court for a warrant, and increase the speed of the FISA process.

We should be standing up for the Constitution today and not passing legislation that tramples all over it.

I urge my colleagues to vote no.

Ms. SCHAKOWSKY. Mr. Speaker, I rise in strong opposition to H.R. 5825, the Electronic Surveillance Modernization Act.

I believe that President Bush's secret warrantless wiretapping program was a violation of the Foreign Intelligence Surveillance Act (FISA) and violated the civil rights that make this country so strong and respected. Once this program was unveiled, the Administration's response was not to change the program to comply with American law but to change American law to comply with this program. As a result, we have the bill before us—legislation that would make truly far-reaching changes to FISA and will have alarming consequences for democracy and civil liberties.

H.R. 5825 expands the definition of "electronic surveillance" to include Americans' international emails and phone calls. It authorizes the warrantless electronic surveillance and physical searches of Americans' emails and phone calls for 60-days after an "armed attack" or 60 days before and after an "imminent attack" against the United States. Those 60-day periods can be indefinitely renewed. Moreover, "imminent attack" is defined as an "attack likely to cause death, serious injury, or substantial economic damage." What is "substantial economic damage?" This definition is so sweeping that hacking into a computer could fit. This bill also strips all courts of jurisdiction over surveillance cases, preventing anyone from seeking redress for illegal or unconstitutional electronic surveillance.

All of us want to be protected from terrorists, but we can protect our Nation without expanding the FISA law so broadly that innocent people can be spied on by their own government without reasonable justification, trampling on our civil liberties. The FISA law already has measures that take into account the need for emergency surveillance, and the need for urgency cannot be used as a rationale for going around America's law. FISA allows wiretapping without a court order in an emergency; the court must simply be notified within 72 hours. The government is aware of this emergency power and has used it repeatedly.

Mr. Speaker, the United States is a Nation built upon its adherence to the laws. And no one—not even a U.S. president—is above the law. Our system of checks and balances must be maintained if American democracy is to be preserved. I urge all of my colleagues to vote "no" to H.R. 5825.

Mr. LANGEVIN. Mr. Speaker, I rise in strong opposition to H.R. 5825, the Electronic Surveillance Modernization Act. Since the President's illegal domestic wiretapping program became public, I have called for greater oversight and Congressional involvement to ensure that we can provide our intelligence agencies with the tools needed to fight terrorism while protecting essential civil liberties of Americans. The bill before us today does not meet those standards.

As a member of the House Armed Services and Homeland Security Committees, I am fully aware of the dangers posed by those who wish to harm Americans, and I have strongly supported efforts to make our nation safer. However, the Bush Administration has not explained to my satisfaction why powers available under existing law cannot meet the needs of the war on terrorism. For example, the Foreign Intelligence Surveillance Act (FISA) already permits the warrantless surveillance of communications under certain limited circumstances. Nevertheless, the Bush Administration did not use those emergency powers and instead chose to expand the authority of the National Security Agency (NSA). The President's decision to expand domestic surveillance, while notifying only a handful of legislators, does not constitute Congressional consent and is a danger to our established Constitutional system of checks and balances.

I would have been receptive to modifications to FISA that preserved the vital oversight through the creation of the FISA court system. I am a cosponsor of H.R. 5381, the Lawful Intelligence and Surveillance of Terrorists in an Emergency by NSA (LISTEN) Act, introduced by the ranking Democrat on the Intelligence Committee, the gentlewoman from California, Mrs. Harman. This legislation would mandate that all monitoring of calls, email records and phone records be carried out in accordance with FISA and further asserts that the 2002 authorization for the NSA domestic surveillance program outside of FISA was not within the Bush Administration's authority.

Instead, this legislation gives the President broad authority to continue his domestic surveillance program without approval from the FISA court. It uses judicial and Congressional notification as a substitute for legitimate oversight, and it establishes such broad justifications for surveillance that the Administration will have almost unlimited ability to continue its past practices with little to no changes. Disturbingly, it also removes an important protection of current law that requires the government to certify that its warrantless surveillance of foreign agents would not intercept the communications of U.S. citizens.

Once again, the President has sought to expand his own authority at the expense of Americans' civil liberties, and Congress has willingly abdicated its oversight authority. I urge my colleagues to vote against this measure so that we can find a better way to crack down on terrorist who would do us harm while safeguarding the rights of Americans.

Mr. UDALL of Colorado. Mr. Speaker, I support changing current law on electronic surveillance to remove obstacles to vigorously fighting terrorism, and I believe we can do so in a way that protects the constitutional rights of our citizens. This bill attempts to strike the right balance, but it has serious flaws that could and should have been corrected—and because of those flaws, I cannot support it as it stands.

I believe the American people should know that on this very important subject, for the most part, we are being asked to legislate in the dark. It is only because of leaks to the news media that we became aware that after the terrorist attacks of 2001 the administration decided not to follow the procedures of the Foreign Intelligence Surveillance Act, FISA, with regard to a new, wide-ranging surveillance program.

Since it became public, that decision has been controversial and has been challenged in the courts, but the administration has consistently maintained that this surveillance program is lawful—although it has been less consistent in its reasons for reaching that conclusion.

Like many of our colleagues, I have found some of their arguments strained and far from fully convincing.

Nonetheless, I do think it makes sense to further revise FISA to reflect both the latest technology and the realities of the current threats to our country. And events since the

revelation of the administration's decision not to comply with FISA have made it clear that there is a definite need for better oversight by Congress, which can occur only if we require more reporting by the executive branch.

So, I react favorably to some points made by this bill's author and supporters in support of the way it addresses both of these concerns. They point to provisions described as designed to update FISA's definition of electronic surveillance to make it technology neutral as well as those they say are intended to enhance congressional oversight not only of electronic surveillance, but also of U.S. intelligence and intelligence-related activities generally.

While these positive aspects of the bill are encouraging, they are unfortunately overwhelmed by the bill's more serious defects.

Overall, this legislation goes very far toward making warrantless surveillance of communications here in the United States the rule rather than the exception and toward allowing the executive branch to conduct electronic surveillance of telephone calls and e-mail in the United States without adequate, meaningful oversight.

The bill makes sweeping alterations to the current definition of ''electronic surveillance'' and how to define an ''agent of a foreign power.'' The bill redefines the term ''surveillance device'' in a way that would allow the government to conduct unregulated data retention and data-mining operations on all the information collected through the warrantless surveillance that this bill authorizes.

My concerns about these provisions are shared by others, including former Representative (and former House Republican leader) Dick Armey, as expressed in a September 26th letter in which he says:

The explosion of computers, cameras, location-sensors, wireless communication, biometrics, and other technologies is making it much easier to track, store, and analyze information about individuals' activities. Unfortunately, the legislation may promote additional government intrusions into individual lives by exempting such data mining from requiring court orders. . . . It is not evident that such legislation will necessarily prevent the next terrorist attack. But . . . failure is unlikely to lead to a halt in federal data mining. Instead, it will probably just spur the government into an ever-more furious effort to collect ever-greater amounts of personal information on ever-more people in a vain effort to make the concept work. We would then have the worst of both worlds: poor security and a vast increase in the information about individuals collected by the government that would destroy Americans' privacy and threaten our freedom.

I also am concerned that while the bill would explicitly allow essentially unlimited surveillance in the event of an ''armed attack'' a ''terrorist attack,'' or an ''imminent threat of attack,'' those terms are not adequately defined. I think this means that there is an unacceptably large chance that these sweeping exceptions would give the Executive Branch unlimited authority to conduct surveillance whenever and however it prefers.

These concerns are heightened by the fact that the bill does not include an explicit reaffirmation of the principle that FISA, including the revisions that would be made by the bill, is the exclusive means for conducting electronic surveillance in the United States. Such a provision would help make sure that every president—now and in the future—complies with the law.

This is not a theoretical matter, because the Bush administration has never indicated that it will comply with FISA—even as it would be revised by this bill, which was proposed by a member of his party and has the support of that party's leadership here in the House of Representatives. Indeed, the Bush administration has indicated it will appeal the recent decision of a federal judge that its ongoing surveillance program—which the administration candidly says does not comply with the current version of FISA—is illegal.

That was one of the reasons I voted for the motion to recommit, which would have added language to reiterate that FISA is the exclusive means by which domestic electronic surveillance for foreign intelligence purposes may be conducted, unless Congress amends the law or passes additional laws regarding electronic surveillance. It also would have made clear that the Authorization for the Use of Military Force, AUMF, passed after the 9/11 attacks and that was the basis for our military actions in Afghanistan—a measure I supported—does not constitute an exception to that rule.

If the motion to recommit had been adopted, the result would have been to approve an alternative version of the legislation so it would update FISA to provide intelligence agencies more flexibility in emergency situations and less bureaucratic red tape when applying for warrants, while still requiring court orders for domestic surveillance of Americans.

That better alternative would have extended from 72 hours to 7 days the amount of time allowed to initiate surveillance in an urgent situation before going to the FISA court for a warrant. This authority can be used to thwart imminent attacks.

The alternative also would have made clear that foreign-to-foreign communications are outside of FISA and don't require a court order, and would have provided that a FISA order for electronic surveillance shall continue to be in effect for the authorized period even if the person leaves the United States. It also would have removed redundant requirements in the application process and made other changes to streamline the FISA process, including adding judges to the FISA court while authorizing that court, the Department of Justice, the FBI, and the NSA to hire more staff for the preparation and consideration of FISA applications and orders. And it would have made clear that in addition to a ''declaration of war by the Congress,'' an ''authorization for the use of military force, AUMF,'' can also trigger the FISA ''wartime exception'' for purposes of allowing 15 days of warrantless surveillance.

I think that alternative had the best features of this bill without its defects. Unfortunately, it was not adopted and those changes were not made.

As a result, I do not think this bill as it stands should be approved. But while I cannot support it tonight, I recognize that it is not being sent to the president for signing into law. Instead, if it passed tonight it will go to the Senate, where it will be subject to further debate and revision.

My hope is that if it does pass tonight, and the legislative process continues, the result of that process will be a revised version that will deserve enactment.

Mr. HOEKSTRA. Mr. Speaker, I yield back the balance of my time.

The SPEAKER pro tempore. All time for debate has expired.

Pursuant to House Resolution 1052, the bill is considered read and the previous question is ordered.

The question is on the engrossment and third reading of the bill.

The bill was ordered to be engrossed and read a third time, and was read the third time.

MOTION TO RECOMMIT OFFERED BY MR. SCHIFF

Mr. SCHIFF. Mr. Speaker, I have a motion to recommit at the desk.

The SPEAKER pro tempore. Is the gentleman opposed to the bill?

Mr. SCHIFF. Yes, in its current form.

The SPEAKER pro tempore. The Clerk will report the motion to recommit.

The Clerk read as follows:

Mr. Schiff of California moves to recommit the bill H.R. 5825 to the Committee on the Judiciary with instructions to report the same back to the House forthwith with the following amendment:

Strike all after the enacting clause and insert the following:

SECTION 1. SHORT TITLE.

This Act may be cited as the ''NSA Oversight Act''.

SEC. 2. FINDINGS.

Congress finds the following:

(1) On September 11, 2001, acts of treacherous violence were committed against the United States and its citizens.

(2) Such acts render it both necessary and appropriate that the United States exercise its right to self-defense by protecting United States citizens both at home and abroad.

(3) The Federal Government has a duty to pursue al Qaeda and other enemies of the United States with all available tools, including the use of electronic surveillance, to thwart future attacks on the United States and to destroy the enemy.

(4) The President of the United States possesses the inherent authority to engage in electronic surveillance of the enemy outside of the United States consistent with his authority as Commander-in-Chief under Article II of the Constitution.

(5) Congress possesses the authority to regulate electronic surveillance within the United States.

(6) The Fourth Amendment to the Constitution guarantees to the American people the right ''to be secure in their persons, houses, papers, and effects, against unreasonable searches and seizures'' and provides that courts shall issue ''warrants'' to authorize searches and seizures, based upon probable cause.

(7) The Supreme Court has consistently held for nearly 40 years that the monitoring and recording of private conversations constitutes a ''search and seizure'' within the meaning of the Fourth Amendment.

(8) The Foreign Intelligence Surveillance Act of 1978 (50 U.S.C. 1801 et seq.) was enacted to provide the legal authority for the Federal Government to engage in searches of Americans in connection with intelligence gathering and counterintelligence.

(9) The Foreign Intelligence Surveillance Act of 1978 was enacted with the express purpose of being the exclusive means by which

the Federal Government conducts electronic surveillance for the purpose of gathering foreign intelligence information.

(10) Warrantless electronic surveillance of Americans inside the United States conducted without congressional authorization may have a serious impact on the civil liberties of citizens of the United States.

(11) United States citizens, such as journalists, academics, and researchers studying global terrorism, who have made international phone calls subsequent to the terrorist attacks of September 11, 2001, and are law-abiding citizens, may have the reasonable fear of being the subject of such surveillance.

(12) Since the nature and criteria of the National Security Agency (NSA) program is highly classified and unknown to the public, many other Americans who make frequent international calls, such as Americans engaged in international business, Americans with family overseas, and others, have a legitimate concern they may be the inadvertent targets of eavesdropping.

(13) The President has sought and signed legislation including the Uniting and Strengthening America by Providing Appropriate Tools Required to Intercept and Obstruct Terrorism (USA PATRIOT ACT) Act of 2001 (Public Law 107–56), and the Intelligence Reform and Terrorism Protection Act of 2004 (Public Law 108–458), that have expanded authorities under the Foreign Intelligence Surveillance Act of 1978.

(14) It may be necessary and desirable to amend the Foreign Intelligence Surveillance Act of 1978 to address new challenges in the Global War on Terrorism. The President should submit a request for legislation to Congress to amend the Foreign Intelligence Surveillance Act of 1978 if the President desires that the electronic surveillance authority provided by such Act be further modified.

(15) The Authorization for Use of Military Force (Public Law 107–40), passed by Congress on September 14, 2001, authorized military action against those responsible for the attacks on September 11, 2001, but did not contain legal authorization nor approve of domestic electronic surveillance for the purpose of gathering foreign intelligence information except as provided by the Foreign Intelligence Surveillance Act of 1978 (50 U.S.C. 1801 et seq.).

SEC. 3. REITERATION THE FOREIGN INTELLIGENCE SURVEILLANCE ACT OF 1978 AS THE EXCLUSIVE MEANS BY WHICH DOMESTIC ELECTRONIC SURVEILLANCE MAY BE CONDUCTED TO GATHER FOREIGN INTELLIGENCE INFORMATION.

(a) EXCLUSIVE MEANS.—Notwithstanding any other provision of law, the Foreign Intelligence Surveillance Act of 1978 (50 U.S.C. 1801 et seq.) shall be the exclusive means by which electronic surveillance for the purpose of gathering foreign intelligence information may be conducted.

(b) FUTURE CONGRESSIONAL ACTION.—Subsection (a) shall apply until specific statutory authorization for electronic surveillance for the purpose of gathering foreign intelligence information, other than as an amendment the Foreign Intelligence Surveillance Act of 1978 (50 U.S.C. 1801 et seq.), is enacted. Such specific statutory authorization shall be the only exception to subsection (a).

SEC. 4. DISCLOSURE REQUIREMENTS.

(a) REPORT.—As soon as practicable after the date of the enactment of this Act, but not later than 14 days after such date, the President shall submit to the Permanent Select Committee on Intelligence of the House of Representatives and the Select Committee on Intelligence of the Senate a report—

(1) on the Terrorist Surveillance Program of the National Security Agency;

(2) on any program which involves the electronic surveillance of United States persons in the United States for foreign intelligence purposes, and which is conducted by any department, agency, or other element of the Federal Government, or by any entity at the direction of a department, agency, or other element of the Federal Government, without fully complying with the procedures set forth in the Foreign Intelligence Surveillance Act of 1978 (50 U.S.C. 1801 et seq.); and

(3) including a description of each United States person who has been the subject of such electronic surveillance not authorized to be conducted under the Foreign Intelligence Surveillance Act of 1978 and the basis for the selection of each person for such electronic surveillance.

(b) FORM.—The report submitted under subsection (a) may be submitted in classified form.

(c) ACCESS.—The Chair of the Permanent Select Committee on Intelligence of the House of Representatives and the Chair of the Select Committee on Intelligence of the Senate shall provide each member of the Committees on the Judiciary of the House of Representatives and the Senate, respectively, access to the report submitted under subsection (a). Such access shall be provided in accordance with security procedures required for the review of classified information.

SEC. 5. FOREIGN INTELLIGENCE SURVEILLANCE COURT MATTERS.

(a) AUTHORITY FOR ADDITIONAL JUDGES.—The first sentence of section 103(a) of the Foreign Intelligence Surveillance Act of 1978 (50 U.S.C. 1803(a)) is amended by striking ''judicial circuits'' and inserting ''judicial circuits, and any additional district court judges that the Chief Justice considers necessary for the prompt and timely consideration of applications under section 104,'';

(b) CONSIDERATION OF EMERGENCY APPLICATIONS.—Section 105(f) of such Act (50 U.S.C. 1805(f)) is amended by adding at the end the following new sentence: ''The judge receiving an application under this subsection shall review such application within 24 hours of the application being submitted.''

SEC. 6. STREAMLINING FISA APPLICATION PROCESS.

(b) IN GENERAL.—Section 104 of the Foreign Intelligence Surveillance Act of 1978 (50 U.S.C. 1804) is amended—

(1) in subsection (a)—

(A) in paragraph (6), by striking ''detailed description'' and inserting ''summary description'';

(B) in paragraph (7)—

(i) in subparagraph (C), by striking ''techniques;'' and inserting ''techniques; and'';

(ii) by striking subparagraph (D); and

(iii) by redesignating subparagraph (E) as subparagraph (D); and

(C) in paragraph (8), by striking ''a statement of the means'' and inserting ''a summary statement of the means''; and

(2) in subsection (e)(1)(A), by striking ''or the Director of National Intelligence'' and inserting ''the Director of National Intelligence, or the Director of the Central Intelligence Agency''.

(a) CONFORMING AMENDMENT.—Section 105(a)(5) of such Act (50 U.S.C. 1805(a)(5)) is amended by striking ''104(a)(7)(E)'' and inserting ''104(a)(7)(D)''.

SEC. 7. INTERNATIONAL MOVEMENT OF TARGETS.

Section 105(d) of the Foreign Intelligence Surveillance Act of 1978 (50 U.S.C. 1805(d)), as redesignated by section 7(4), is amended by adding at the end the following new paragraph:

''(4) An order issued under this section shall remain in force during the authorized period of surveillance notwithstanding the absence of the target from the United States, unless the Government files a motion to extinguish the order and the court grants the motion.''.

SEC. 8. EXTENSION OF PERIOD FOR APPLICATIONS FOR ORDERS FOR EMERGENCY ELECTRONIC SURVEILLANCE.

Section 105(f) of the Foreign Intelligence Surveillance Act of 1978 (50 U.S.C. 1805(f)) is further amended by striking ''72 hours'' each place it appears and inserting ''168 hours''.

SEC. 9. ENHANCEMENT OF ELECTRONIC SURVEILLANCE AUTHORITY IN WARTIME.

Section 111 of the Foreign Intelligence Surveillance Act of 1978 (50 U.S.C. 1811) is amended by striking ''the Congress'' and inserting ''the Congress or an authorization for the use of military force described in section 2(c)(2) of the War Powers Resolution (50 U.S.C. 1541(c)(2)) if such authorization contains a specific authorization for electronic surveillance under this section.''.

SEC. 10. ACQUISITION OF COMMUNICATIONS BETWEEN PARTIES NOT IN THE UNITED STATES.

The Foreign Intelligence Surveillance Act of 1978 (50 U.S.C. 1801 et seq.) is further amended—

(1) by adding at the end of title I the following new section:

''ACQUISITION OF COMMUNICATIONS BETWEEN PARTIES NOT IN THE UNITED STATES

''SEC. 112. (a) IN GENERAL.—Notwithstanding any other provision of this Act, a court order is not required for the acquisition of the contents of any communication between persons that are not located within the United States for the purpose of collecting foreign intelligence information, without respect to whether the communication passes through the United States or the surveillance device is located within the United States.

''(b) TREATMENT OF INTERCEPTED COMMUNICATIONS INVOLVING A DOMESTIC PARTY.—If an acquisition described in subsection (a) inadvertently collects a communication in which at least one party to the communication is within the United States—

''(1) in the case of a communication acquired inside the United States, the contents of such communication shall be handled in accordance with minimization procedures adopted by the Attorney General that require that no contents of any communication to which a United States person is a party shall be disclosed, disseminated, or used for any purpose or retained for longer than 168 hours unless a court order under section 105 is obtained or unless the Attorney General determines that the information indicates a threat of death or serious bodily harm to any person; and

''(2) in the case of a communication acquired outside the United States, the contents of such communication shall be handled in accordance with minimization procedures adopted by the Attorney General.''; and

(2) in the table of contents in the first section, by inserting after the item relating to section 111 the following:

''112. Acquisition of communications between parties not in the United States.''.

SEC. 11. ADDITIONAL PERSONNEL FOR PREPARATION AND CONSIDERATION OF APPLICATIONS FOR ORDERS APPROVING ELECTRONIC SURVEILLANCE.

(a) OFFICE OF INTELLIGENCE POLICY AND REVIEW.—

(1) IN GENERAL.—The Attorney General may hire and assign personnel to the Office of Intelligence Policy and Review as may be necessary to carry out the prompt and timely preparation, modification, and review of applications under section 104 of the Foreign Intelligence Surveillance Act of 1978 (50 U.S.C. 1804) for orders approving electronic surveillance for foreign intelligence purposes under section 105 of such Act (50 U.S.C. 1805).

(2) ASSIGNMENT.—The Attorney General shall assign personnel hired and assigned pursuant to paragraph (1) to and among appropriate offices of the National Security Agency in order that such personnel may directly assist personnel of the National Security Agency in preparing applications under section 104 of the Foreign Intelligence Surveillance Act of 1978 (50 U.S.C. 1804).

(b) NATIONAL SECURITY BRANCH OF THE FBI.—

(1) IN GENERAL.—The Director of the Federal Bureau of Investigation may hire and assign personnel to the National Security Branch as may be necessary to carry out the prompt and timely preparation of applications under section 104 of the Foreign Intelligence Surveillance Act of 1978 (50 U.S.C. 1804) for orders approving electronic surveillance for foreign intelligence purposes under section 105 of such Act (50 U.S.C. 1805).

(2) ASSIGNMENT.—The Director of the Federal Bureau of Investigation shall assign personnel hired and assigned pursuant to paragraph (1) to and among the field offices of the Federal Bureau of Investigation in order that such personnel may directly assist personnel of the Federal Bureau of Investigation in such field offices in preparing applications under section 104 of the Foreign Intelligence Surveillance Act of 1978 (50 U.S.C. 1804).

(c) NATIONAL SECURITY AGENCY.—The Director of the National Security Agency may hire and assign personnel as may be necessary to carry out the prompt and timely preparation of applications under section 104 of the Foreign Intelligence Surveillance Act of 1978 (50 U.S.C. 1804) for orders approving electronic surveillance for foreign intelligence purposes under section 105 of such Act (50 U.S.C. 1805).

(d) FOREIGN INTELLIGENCE SURVEILLANCE COURT.—The presiding judge designated under section 103(b) of such Act may hire and assign personnel as may be necessary to carry out the prompt and timely consideration of applications under section 104 of such Act (50 U.S.C. 1804) for orders approving electronic surveillance for foreign intelligence purposes under section 105 of that Act (50 U.S.C. 1805).

SEC. 12. DEFINITIONS.

In this Act:

(1) The term ''electronic surveillance'' has the meaning given the term in section 101(f) of the Foreign Intelligence Surveillance Act of 1978 (50 U.S.C. 1801(f)).

(2) The term ''foreign intelligence information'' has the meaning given the term in section 101(e) of such Act (50 U.S.C. 1801(e)).

Mr. SCHIFF (during the reading). Mr. Speaker, I ask unanimous consent that the motion to recommit be considered as read and printed in the RECORD.

The SPEAKER pro tempore. Is there objection to the request of the gentleman from California?

The SPEAKER pro tempore. The gentleman is recognized for 5 minutes in support of his motion to recommit.

Mr. SCHIFF. Mr. Speaker, it is a regrettable fact that at the beginning of the 21st century there are a great many people in the world whose primary motive in life is to seek to harm or kill Americans. Our country faces a real threat, and it must be addressed.

As we fight this threat, Americans need to know two things. First, that we will use every tool we have necessary to stop the people that would hurt this country, that we will do everything possible to find them, to capture them, to kill them, if necessary. We will surveil them, we will listen to their calls and their e-mails, and we will do everything in our power to protect this country.

Second, Americans need to know that if you are a law-abiding citizen and you are not a terrorist or supporting terrorists that we will respect your privacy. We will not listen to your calls when we do not have a business to, and we will not read your e-mails when we have no business to.

Under the Schiff-Flake motion to recommit, we modernize FISA. We give the government the time, the flexibility it needs. We fix the problem of foreigners talking to foreigners in calls that go through the United States. In short, we do everything that the NSA and the Justice Department has asked us to do.

The base bill, by contrast, excludes whole categories of surveillance, including the surveillance of Americans on American soil from court review. The base bill can be summarized as follows: Trust us. We are from the government. We may listen to you, but trust us. We know what we are doing.

But our Constitution was drafted on a very different premise, a premise that said we operate from a system of checks and balances, that no one branch of government should be trusted implicitly, without review and oversight by another.

Today, we have a choice between two alternatives, both of which modernize FISA, one which gives a blank check sought by the administration, the other that protects Americans on American soil.

One of the leaders in this debate that I have been privileged to work with is my colleague from the great State of Arizona, and I yield to the gentleman from Arizona (Mr. FLAKE).

Mr. FLAKE. Mr. Speaker, I thank the gentleman for yielding.

Mr. Speaker, I am not comfortable in this position, standing up to argue in favor of a Democrat motion to recommit. Just a year ago, I stood at that very podium and argued on behalf of the majority in favor of reauthorization of the PATRIOT Act and against the Democrat motion to recommit that was favored by many of my colleagues.

But during that process, we had more than a dozen hearings, a long markup, a spirited debate on the floor under a rule that allowed for a series of amendments, including four of my own. We did not have that process this time.

This was a closed rule that did not allow for a vote, a clean vote, on a bipartisan substitute except as a Democrat motion to recommit. I wish that this were not the case because, as I said, I try not to make a habit of voting for Democrat motions to recommit.

But for those of us who believe we should exercise our congressional prerogative to regulate the President's authority to conduct surveillance, this is our only option. For those of us who believe that FISA should be the exclusive vehicle for conducting surveillance related to foreign intelligence, this is our only option. And for those of us who believe that we should give the administration all the tools they need to conduct surveillance but retain the ability to regulate and provide oversight for such surveillance, this is our only option.

If the underlying bill is enacted into law, we will have two surveillance programs, one under FISA and on the books, and one outside of FISA and off the books. If we do this, we will not give due deference to our congressional responsibility.

Make no mistake, if we vote for the underlying bill and against the motion to recommit, we will walk out of these doors a lot less relevant than when we walked in this morning.

With that, Mr. Speaker, I urge a vote for the Democrat motion to recommit and against the underlying bill.

Mr. SCHIFF. Mr. Speaker, I yield to the gentleman from South Carolina (Mr. INGLIS).

Mr. INGLIS of South Carolina. Mr. Speaker, I thank the gentleman for yielding.

You know, we want to listen to the terrorists. We want to know who they are talking to. If they are talking foreign to foreign, we clearly have the right to listen in. If they are talking foreign to domestic, we want to listen, but we want a judge to review that.

The idea is to have in this separation of powers between the judicial and the executive branch the oversight that the Framers had in mind for our constitutional system.

At the end of this war on terror, it is really about whether we have preserved the constitutional system that is going to win the hearts and minds of the world to our point of view. It is crucial that we do that here tonight by voting to see that we have judicial oversight.

I thank the gentleman for yielding.

Mr. HOEKSTRA. Mr. Speaker, I rise in opposition to the motion to recommit.

The SPEAKER pro tempore. The gentleman is recognized for 5 minutes.

Mr. HOEKSTRA. Mr. Speaker, I yield to the gentlewoman from New Mexico

(Mrs. WILSON), the chairwoman of the Tactical and Technical Subcommittee.

Mrs. WILSON of New Mexico. Mr. Speaker, there are two technical reasons to oppose this motion to recommit, and I do not think that the authors of the motion to recommit were entirely aware of what they would do, but I think the House needs to understand it.

First, in the motion to recommit, there is no change to the definition of electronic surveillance. That means it is not technology neutral, and we would continue to have the odd situation when al Qaeda calls in to the United States over a radio we could intercept that communication completely outside of FISA, but if they call in on a wire, we still could not listen. This is why we need to update the Electronic Surveillance Act, as the base bill does.

And, secondly, the exclusivity provision written into the motion to recommit says that the only way to collect foreign intelligence in the United States is through FISA. That is not current law. Under current law, under title XVIII, foreign intelligence information collected through criminal proceedings can be shared with the intelligence community.

What this motion to recommit effectively does is rebuild the walls we have torn down between law enforcement and foreign intelligence.

Mr. HOEKSTRA. Mr. Speaker, I thank the gentlewoman for her comments.

The arguments this evening on the other side have been along the lines of FISA does work. The President acted alone and in secret. FISA is the only tool that is necessary.

But we know that that is not true. It does not work. The President did not act in secret, and FISA's insufficient.

It is September 11, 2001, shortly after the attacks. The President calls in his National Security Advisor, calls in folks from the intelligence community, and says, how do we get a better handle on who is attacking us? What other tools do we need to put in place to make sure that we can fight and win this war on terrorism?

They developed their ideas. They identified the strategies and the new tactics that they need to fight this war against terrorism effectively.

October 25, 2001, the President convenes and meets with congressional leaders and outlines this program to them and with them, or the executive branch does, and the group in there recognizes that against this enemy FISA does not work and that collaboratively, working with the executive branch and Congress, we need to implement new tools to keep America safe.

The terrorist surveillance program that has been used for the last 4 years is not only the President's terrorist surveillance program, it is the terrorist surveillance program of the President, Minority Leader PELOSI, Ranking Member HARMAN, former Majority Leader Daschle, all who had the opportunity regularly to review this program, to see how it worked, why it needed to be done in the way that it was being done, and the benefits that America was receiving from the program and the impact it was having in keeping America safe and enabling us to move forward.

It is because these individuals, working with the President, recognize that FISA was insufficient that they agreed to move forward with the terrorist surveillance program for almost 4 years, until this very valuable tool was leaked by the New York Times. We are a country that is less safe because of that. It is why we are now having this debate, because now al Qaeda and radical Islamists know more about our tools and fighting them than what they did before.

It is time to update this law, to pass this bill to make sure that we can continue providing our intelligence community with tools they need.

Build on the work of the President, of Minority Leader PELOSI, Ranking Member HARMAN, Majority Leader Daschle, all who agreed that FISA did not work and that the President and the executive branch needed the authorities and the capabilities that are now outlined in its many ways and are brought under more congressional oversight under the Wilson bill, and allow for more congressional oversight in a defined way through the Wilson bill.

This is the way we need to go, the direction we need to take because we are a Nation at war, under threat, and this is the appropriate updating of an old law that the White House but also congressional leaders in a bipartisan way agreed did not work.

Vote against the motion to recommit. Vote for final passage.

□ 2145

The SPEAKER pro tempore. All time has expired.

Without objection, the previous question is ordered on the motion to recommit.

There was no objection.

The SPEAKER pro tempore. The question is on the motion to recommit.

The question was taken; and the Speaker pro tempore announced that the noes appeared to have it.

Mr. SCHIFF. Mr. Speaker, on that I demand the yeas and nays.

The yeas and nays were ordered.

The SPEAKER pro tempore. Pursuant to clause 8 and clause 9 of rule XX, this 15-minute vote on the motion to recommit will be followed by 5-minute votes on passage of H.R. 5825, if ordered; and the motion to suspend the rules on H.R. 6143.

The vote was taken by electronic device, and there were—yeas 202, nays 221, not voting 9, as follows:

[Roll No. 501]

YEAS—202

Abercrombie
Ackerman
Allen
Andrews
Baca
Baird
Baldwin
Bean
Becerra
Berkley
Berman
Berry
Bishop (GA)
Bishop (NY)
Blumenauer
Boren
Boswell
Boucher
Boyd
Brady (PA)
Brown (OH)
Brown, Corrine
Butterfield
Capps
Capuano
Cardin
Cardoza
Carnahan
Carson
Case
Chandler
Clay
Cleaver
Clyburn
Conyers
Cooper
Costa
Costello
Cramer
Crowley
Cuellar
Cummings
Davis (AL)
Davis (CA)
Davis (FL)
Davis (IL)
Davis (TN)
DeFazio
DeGette
Delahunt
DeLauro
Dicks
Dingell
Doggett
Doyle
Duncan
Emanuel
Engel
Eshoo
Etheridge
Farr
Fattah
Filner
Flake
Ford
Frank (MA)
Gonzalez
Gordon
Green, Al
Green, Gene
Grijalva
Gutierrez
Harman
Hastings (FL)
Herseth
Higgins
Hinchey
Hinojosa
Holden
Holt
Honda
Hooley
Hoyer
Inglis (SC)
Israel
Jackson (IL)
Jackson-Lee (TX)
Jefferson
Johnson (IL)
Johnson, E. B.
Jones (NC)
Jones (OH)
Kanjorski
Kaptur
Kennedy (RI)
Kildee
Kilpatrick (MI)
Kind
Kolbe
Kucinich
Langevin
Lantos
Larsen (WA)
Larson (CT)
Lee
Levin
Lipinski
Lofgren, Zoe
Lowey
Lynch
Mack
Maloney
Markey
Matheson
Matsui
McCarthy
McCollum (MN)
McDermott
McGovern
McIntyre
McKinney
McNulty
Meek (FL)
Meeks (NY)
Michaud
Millender-McDonald
Miller (NC)
Miller, George
Mollohan
Moore (KS)
Moore (WI)
Moran (VA)
Murtha
Nadler
Napolitano
Neal (MA)
Oberstar
Obey
Olver
Ortiz
Otter
Owens
Pallone
Pascrell
Pastor
Paul
Payne
Pelosi
Peterson (MN)
Poe
Pomeroy
Price (NC)
Rahall
Rangel
Reyes
Ross
Rothman
Roybal-Allard
Ruppersberger
Rush
Ryan (OH)
Sabo
Salazar
Sánchez, Linda T.
Sanchez, Loretta
Sanders
Schakowsky
Schiff
Schwartz (PA)
Scott (GA)
Scott (VA)
Serrano
Sherman
Skelton
Slaughter
Smith (WA)
Snyder
Solis
Spratt
Stark
Tanner
Tauscher
Taylor (MS)
Thompson (CA)
Thompson (MS)
Tierney
Towns
Udall (CO)
Udall (NM)
Van Hollen
Velázquez
Visclosky
Wasserman Schultz
Waters
Watson
Watt
Waxman
Weiner
Wexler
Woolsey
Wu
Wynn

NAYS—221

Aderholt
Akin
Alexander
Bachus
Baker
Barrett (SC)
Barrow
Bartlett (MD)
Barton (TX)
Bass
Beauprez
Biggert
Bilbray
Bilirakis
Bishop (UT)
Blackburn
Blunt
Boehlert
Boehner
Bonilla
Bonner
Bono
Boozman
Boustany
Bradley (NH)
Brady (TX)
Brown (SC)
Brown-Waite, Ginny
Burgess
Burton (IN)
Buyer
Calvert
Camp (MI)
Campbell (CA)
Cannon
Cantor
Capito
Carter
Chocola
Coble
Cole (OK)
Conaway
Crenshaw
Cubin
Culberson
Davis (KY)
Davis, Jo Ann
Davis, Tom
Deal (GA)
Dent
Diaz-Balart, L.
Diaz-Balart, M.
Doolittle
Drake
Dreier
Edwards
Ehlers
Emerson
English (PA)
Everett
Feeney
Ferguson

Fitzpatrick (PA)
Foley
Forbes
Fortenberry
Fossella
Foxx
Franks (AZ)
Frelinghuysen
Gallegly
Garrett (NJ)
Gerlach
Gibbons
Gilchrest
Gillmor
Gingrey
Gohmert
Goode
Goodlatte
Granger
Graves
Green (WI)
Gutknecht
Hall
Harris
Hart
Hastings (WA)
Hayes
Hayworth
Hefley
Hensarling
Herger
Hobson
Hoekstra
Hostettler
Hulshof
Hunter
Hyde
Issa
Istook
Jenkins
Jindal
Johnson (CT)
Johnson, Sam
Keller
Kelly
Kennedy (MN)
King (IA)
King (NY)
Kingston
Kirk
Kline
Knollenberg
Kuhl (NY)
LaHood
Latham
LaTourette
Leach
Lewis (CA)
Lewis (KY)
Linder
LoBiondo
Lucas
Lungren, Daniel E.
Manzullo
Marchant
Marshall
McCaul (TX)
McCotter
McCrery
McHenry
McHugh
McKeon
McMorris Rodgers
Melancon
Mica
Miller (FL)
Miller (MI)
Miller, Gary
Moran (KS)
Murphy
Musgrave
Myrick
Neugebauer
Northup
Norwood
Nunes
Nussle
Osborne
Oxley
Pearce
Pence
Peterson (PA)
Petri
Pickering
Pitts
Platts
Pombo
Porter
Price (GA)
Pryce (OH)
Putnam
Radanovich
Ramstad
Regula
Rehberg
Reichert
Renzi
Reynolds
Rogers (AL)
Rogers (KY)
Rogers (MI)
Rohrabacher
Ros-Lehtinen
Royce
Ryan (WI)
Ryun (KS)
Saxton
Schmidt
Schwarz (MI)
Sensenbrenner
Sessions
Shadegg
Shaw
Shays
Sherwood
Shimkus
Shuster
Simmons
Simpson
Smith (NJ)
Smith (TX)
Sodrel
Souder
Stearns
Sullivan
Sweeney
Tancredo
Taylor (NC)
Terry
Thomas
Thornberry
Tiahrt
Tiberi
Turner
Upton
Walden (OR)
Walsh
Wamp
Weldon (FL)
Weldon (PA)
Weller
Westmoreland
Whitfield
Wicker
Wilson (NM)
Wilson (SC)
Wolf
Young (AK)
Young (FL)

NOT VOTING—9

Castle
Chabot
Evans
Inslee
Lewis (GA)
Meehan
Ney
Strickland
Stupak

□ 2210

Mrs. KELLY and Ms. HART and Messrs. SHUSTER, BILBRAY, BURGESS, GOODE, LEACH and SHAYS changed their vote from ''yea'' to ''nay.''

Mr. DOGGETT changed his vote from ''nay'' to ''yea.''

So the motion to recommit was rejected.

The result of the vote was announced as above recorded.

The SPEAKER pro tempore. The question is on the passage of the bill.

The question was taken; and the Speaker pro tempore announced that the ayes appeared to have it.

Mr. HOEKSTRA. Mr. Speaker, on that I demand the yeas and nays.

The yeas and nays were ordered.

The SPEAKER pro tempore. This will be a 5-minute vote.

The vote was taken by electronic device, and there were—yeas 232, nays 191, not voting 9, as follows:

[Roll No. 502]

YEAS—232

Aderholt
Akin
Alexander
Bachus
Baker
Barrett (SC)
Barrow
Bartlett (MD)
Barton (TX)
Bass
Bean
Beauprez
Berry
Biggert
Bilbray
Bilirakis
Bishop (UT)
Blackburn
Blunt
Boehlert
Boehner
Bonilla
Bonner
Bono
Boozman
Boren
Boswell
Boustany
Bradley (NH)
Brady (TX)
Brown (SC)
Brown-Waite, Ginny
Burgess
Burton (IN)
Buyer
Calvert
Camp (MI)
Campbell (CA)
Cannon
Cantor
Capito
Carter
Chocola
Coble
Cole (OK)
Conaway
Cramer
Crenshaw
Cubin
Cuellar
Culberson
Davis (KY)
Davis (TN)
Davis, Jo Ann
Davis, Tom
Deal (GA)
Dent
Diaz-Balart, L.
Diaz-Balart, M.
Doolittle
Drake
Dreier
Duncan
Edwards
Ehlers
Emerson
English (PA)
Everett
Feeney
Ferguson
Fitzpatrick (PA)
Foley
Forbes
Ford
Fortenberry
Fossella
Foxx
Franks (AZ)
Frelinghuysen
Gallegly
Gerlach
Gibbons
Gilchrest
Gillmor
Gingrey
Gohmert
Goode
Goodlatte
Gordon
Granger
Graves
Green (WI)
Gutknecht
Hall
Harris
Hart
Hastings (WA)
Hayes
Hayworth
Hefley
Hensarling
Herger
Herseth
Hobson
Hoekstra
Hulshof
Hunter
Hyde
Issa
Istook
Jenkins
Jindal
Johnson (CT)
Johnson, Sam
Keller
Kelly
Kennedy (MN)
King (IA)
King (NY)
Kingston
Kirk
Kline
Knollenberg
Kolbe
Kuhl (NY)
LaHood
Latham
LaTourette
Lewis (CA)
Lewis (KY)
Linder
LoBiondo
Lucas
Lungren, Daniel E.
Manzullo
Marchant
Marshall
Matheson
McCaul (TX)
McCotter
McCrery
McHenry
McHugh
McKeon
McMorris Rodgers
Melancon
Mica
Miller (FL)
Miller (MI)
Miller, Gary
Murphy
Musgrave
Myrick
Neugebauer
Northup
Norwood
Nunes
Nussle
Osborne
Oxley
Pearce
Pence
Peterson (MN)
Peterson (PA)
Petri
Pickering
Pitts
Platts
Poe
Pombo
Porter
Price (GA)
Pryce (OH)
Putnam
Radanovich
Ramstad
Regula
Rehberg
Reichert
Renzi
Reynolds
Rogers (AL)
Rogers (KY)
Rogers (MI)
Rohrabacher
Ros-Lehtinen
Royce
Ryan (WI)
Ryun (KS)
Saxton
Schmidt
Schwarz (MI)
Sensenbrenner
Sessions
Shadegg
Shaw
Sherwood
Shimkus
Shuster
Simmons
Simpson
Smith (NJ)
Smith (TX)
Sodrel
Souder
Spratt
Stearns
Sullivan
Sweeney
Tancredo
Taylor (MS)
Taylor (NC)
Terry
Thomas
Thornberry
Tiahrt
Tiberi
Turner
Upton
Walden (OR)
Walsh
Wamp
Weldon (FL)
Weldon (PA)
Weller
Westmoreland
Whitfield
Wicker
Wilson (NM)
Wilson (SC)
Wolf
Young (FL)

NAYS—191

Abercrombie
Ackerman
Allen
Andrews
Baca
Baird
Baldwin
Becerra
Berkley
Berman
Bishop (GA)
Bishop (NY)
Blumenauer
Boucher
Boyd
Brady (PA)
Brown (OH)
Brown, Corrine
Butterfield
Capps
Capuano
Cardin
Cardoza
Carnahan
Carson
Case
Chandler
Clay
Cleaver
Clyburn
Conyers
Cooper
Costa
Costello
Crowley
Cummings
Davis (AL)
Davis (CA)
Davis (FL)
Davis (IL)
DeFazio
DeGette
Delahunt
DeLauro
Dicks
Dingell
Doggett
Doyle
Emanuel
Engel
Eshoo
Etheridge
Farr
Fattah
Filner
Flake
Frank (MA)
Garrett (NJ)
Gonzalez
Green, Al
Green, Gene
Grijalva
Harman
Hastings (FL)
Higgins
Hinchey
Hinojosa
Holden
Holt
Honda
Hooley
Hostettler
Hoyer
Inglis (SC)
Inslee
Israel
Jackson (IL)
Jackson-Lee (TX)
Jefferson
Johnson (IL)
Johnson, E. B.
Jones (NC)
Jones (OH)
Kanjorski
Kaptur
Kennedy (RI)
Kildee
Kilpatrick (MI)
Kind
Kucinich
Langevin
Lantos
Larsen (WA)
Larson (CT)
Leach
Lee
Levin
Lipinski
Lofgren, Zoe
Lowey
Lynch
Mack
Maloney
Markey
Matsui
McCarthy
McCollum (MN)
McDermott
McGovern
McIntyre
McKinney
McNulty
Meek (FL)
Meeks (NY)
Michaud
Millender-McDonald
Miller (NC)
Miller, George
Mollohan
Moore (KS)
Moore (WI)
Moran (KS)
Moran (VA)
Murtha
Nadler
Napolitano
Neal (MA)
Oberstar
Obey
Olver
Ortiz
Otter
Owens
Pallone
Pascrell
Pastor
Paul
Payne
Pelosi
Pomeroy
Price (NC)
Rahall
Rangel
Reyes
Ross
Rothman
Roybal-Allard
Ruppersberger
Rush
Ryan (OH)
Sabo
Salazar
Sánchez, Linda T.
Sanchez, Loretta
Sanders
Schakowsky
Schiff
Schwartz (PA)
Scott (GA)
Scott (VA)
Serrano
Shays
Sherman
Skelton
Slaughter
Smith (WA)
Snyder
Solis
Stark
Tanner
Tauscher
Thompson (CA)
Thompson (MS)
Tierney
Towns
Udall (CO)
Udall (NM)
Van Hollen
Velázquez
Visclosky
Wasserman Schultz
Waters
Watson
Watt
Waxman
Weiner
Wexler
Woolsey
Wu
Wynn
Young (AK)

NOT VOTING—9

Castle
Chabot
Evans
Gutierrez
Lewis (GA)
Meehan
Ney
Strickland
Stupak

□ 2219

So the bill was passed.

The result of the vote was announced as above recorded.

A motion to reconsider was laid on the table.

PERMISSION TO MAKE CORRECTIONS IN ENGROSSMENT OF H.R. 5825, ELECTRONIC SURVEILLANCE MODERNIZATION ACT

Mr. HOEKSTRA. Mr. Speaker, I ask unanimous consent that staff be permitted to make technical and conforming changes to the bill just adopted.

The SPEAKER pro tempore. Is there objection to the request of the gentleman from Michigan?

There was no objection.