

Mr. FEINGOLD. I yield myself as much of our time as I require.

The PRESIDING OFFICER. The Senator may proceed.

#### THE USA PATRIOT ACT

Mr. FEINGOLD. October 26 will mark the second anniversary of the USA PATRIOT Act. I wish to speak today about the continuing and growing controversy surrounding that law, which was passed just 6 weeks after the September 11 terrorist attack.

I was the only Senator to vote against the PATRIOT Act. As I said during the debate in the fall of 2001, the act contained many provisions that were necessary and appropriate to help protect our Nation against terrorism. I still believe that. But I also argue that the PATRIOT Act went too far; that it threatened our citizens' constitutional rights and liberties. That is why I could not support it and why I insisted on offering amendments to the bill on the floor.

Today, 2 years later, I still believe that as well. An increasing number of Americans have agreed and have expressed their concerns that certain provisions of the PATRIOT Act threaten the rights and liberties guaranteed by our Constitution for over 200 years. The chorus of voices of doubt has grown so loud that the Bush administration has responded but not, I am sorry to say, by addressing these concerns in a constructive and open way. Rather, the administration has initiated what seems to be a public relations campaign in recent weeks to simply defend the PATRIOT Act in its entirety.

The Attorney General has gone on the road and on the Internet to extol the virtues of the law. Speaking before hand-picked audiences of law enforcement personnel, he has ridiculed and dismissed those who have raised concerns about the law. A few weeks ago he denounced "the charges of the hysterics" as "castles in the air, built on misrepresentation, supported by unfounded fear, held aloft by hysteria."

I think these words are unfortunate, and in its zeal to defend the act the administration appears unwilling to even acknowledge the legitimate concerns of many Americans; and it objects to commonsense proposals to protect privacy and civil liberties that would not in any way undermine the fight against terrorism—proposals such as my bill, the Library, Bookseller, and Personal Records Privacy Act, and Senator CRAIG's bill, the SAFE Act, which I also strongly support, which would protect the constitutional rights of innocent citizens, while still allowing the FBI to do its job to protect our Nation from another terrorist attack.

As Members of Congress, we have taken a solemn oath to uphold the Constitution of the United States. The President and the executive branch officials, of course, take this same oath. The burden is on the administration, which sought the powers included in

the PATRIOT Act and which now seeks even more powers, to show that the current law and proposed new laws are consistent with the Constitution.

Let me take a moment to remind my colleagues how a commitment to individual rights became part of the founding principles of our Nation and enshrined as the Bill of Rights.

In 1787, in the halls of the State House of Pennsylvania in Philadelphia, GEN George Washington, who led our Nation to victory during the Revolution, convened the Constitutional Convention. A number of great political figures were delegates to that convention. Joining Washington were other distinguished Americans such as James Madison, Benjamin Franklin, Alexander Hamilton, and George Mason. Mason participated in the Convention, but he was concerned that the deliberations would result in a Constitution creating a central government with too much power over the States and individuals.

Mason, a patriotic American, who loved his newly found freedom from British rule, had reservations when he made the trip to Philadelphia. Prior to the Convention, he had written a bill of rights for the State Constitution of Virginia. He urged delegates to the Convention to include a bill of rights also in the national Constitution.

But a majority of delegates initially disagreed with Mason. When the draft of the Constitution was released, it failed to contain a bill of rights or any other explicit protection for the rights of individuals. Mason was bitterly disappointed.

Mason was concerned that, without any explicit protection for individual liberties, the Constitution would open the doors to tyranny by a central government. Why? Because our experience with British rule, in which the colonial power was able to infringe on individual rights, was still very much on his mind. So after the Constitutional Convention adjourned, Mason continued to push for a bill of rights.

During the next 2 years, as the Constitution made its way to the States for consideration and ratification, the American people came to agree with Mason, and he prevailed.

Thomas Jefferson wrote to Madison that a bill of rights was "what the people are entitled to against every government on earth."

Another statesman, Richard Henry Lee, who was one of the signers of the Declaration of Independence, said provisions were needed to protect "those essential rights of mankind without which liberty cannot exist."

Madison, who was initially opposed to including a bill of rights, was persuaded. An explicit protection for the rights of people or a bill of rights was needed in our Nation's governing document.

So, Mr. President, on September 25, 1789—almost exactly 214 years ago—the First Congress of the United States proposed 12 amendments to the Con-

stitution. Ten of these amendments were ratified 2 years later by the legislatures of at least three-fourths of the States. The remaining two amendments relating to compensation for Members of Congress and the number of constituents per Representative were not ratified at that time.

The first 10 amendments to the Constitution, of course, are what Americans now know as the Bill of Rights. The first amendment guarantees freedom of speech, freedom of religion, and freedom of association.

The second amendment guarantees the right to bear arms.

The fourth amendment protects against unreasonable search and seizures.

The fifth amendment ensures that no person shall be deprived of life, liberty, or property without due process of law.

The sixth amendment guarantees a right to counsel and a right to trial by jury to those charged with crimes.

During the debate on our Constitution, our Nation was at a critical juncture: Do we follow a path toward a highly centralized government with the potential for tyranny or do we follow a path toward a government with checks and balances, respect for States in a Federal system, and protections of individual rights and liberties?

The decisions made in the first days of the Republic have stood the test of time. They, of course, created the greatest democracy on Earth and a governmental structure that is most protective of individual freedom and liberty in history.

Today we stand at another critical crossroads. As our Nation faces new terrorist threats, we must respond to those threats without compromising the civil liberties that are the bedrock of our country. We must balance the legitimate needs of law enforcement against the privacy and freedom of all Americans, and that is not an easy task.

One thing I know, the solution is not simply to grant the Federal Government more and more power to conduct surveillance, eavesdrop, and collect information on law-abiding Americans.

The debate about the PATRIOT Act echoes the debate over two centuries ago in the halls of the statehouse in Philadelphia. Today, as then, we must take from our experience as a nation. We must remember the critical role the Constitution and, in particular, the Bill of Rights, has had in guiding our country through national crises, war, and armed conflicts at home and abroad, including the War of 1812, the Civil War, the two World Wars, and the cold war.

The Constitution has survived and flourished throughout our history, and respect for individual freedom and privacy has steadily advanced.

In the immediate aftermath of the September 11, 2001, terrorist attacks, there was, understandably, a great desire to give the administration the tools it said it needed to fight terrorism and prevent another terrorist

attack. But with time to study and reflect after enactment of the PATRIOT Act 2 years ago, many Americans have now paused and come to see a very real potential for abuse of power and infringement of privacy and civil liberties unleashed by this law.

There is strong and growing bipartisan support for changes to the act to protect our rights and liberties. I am confident that this right-left and moderate coalition of support will continue to grow and eventually occupy the center as more and more Americans learn what the law means.

The coalition includes Americans for Tax Reform, the American Conservative Union, and the Free Congress Foundation, as well as the ACLU and the Open Society Policy Center.

At the State and local level, 3 States and over 180 cities and counties have enacted provisions and resolutions expressing concern with the PATRIOT Act. These States and communities represent over 25 million residents, and these localities are not just left-leaning college towns, such as Madison and Berkeley, but also right-leaning, libertarian regions of the country such as Flagstaff, AZ, Boise, ID, and the State of Alaska.

Here in Congress several legislative proposals have now been introduced proposing changes to the PATRIOT Act to protect privacy and civil liberties. During its consideration of the Commerce-State-Justice appropriations legislation, the House adopted an amendment by Representative OTTER to restrict the FBI's use of the "sneak and peak" power granted by the PATRIOT Act. The Otter amendment received overwhelming support, including 113 votes from Republican Members of the House.

In the Senate, Senator MURKOWSKI of Alaska and Senator WYDEN of Oregon have introduced a bill, S. 1552, proposing to modify a number of the provisions of the PATRIOT Act. As I mentioned earlier, I have introduced the Library, Bookseller, and Personal Records Privacy Act, S. 1507, and now there is the SAFE Act, S. 1709, which I also mentioned earlier. I am pleased to join my colleagues Senators CRAIG, DURBIN, CRAPO, SUNUNU, WYDEN, and BINGAMAN in supporting this bill.

The SAFE Act does not repeal the PATRIOT Act. It simply proposes reasonable modifications to four particularly troubling PATRIOT Act provisions. These modifications will help to protect civil liberties and privacy by strengthening the role of judges in approving certain kinds of search and surveillance authority expanded by the PATRIOT Act.

Specifically, the SAFE Act would strengthen the role of the courts in approving delayed notice searches, requests for access to library, medical, and other records containing sensitive personal information, and roving wiretaps in FISA cases.

These are the issues I first raised in the fall of 2001 as the main reasons why

I believe the PATRIOT Act was flawed and threatened fundamental constitutional rights and protections. For me and those few of my colleagues who supported my business records and roving wiretap amendments to the PATRIOT Act, it sure was a lonely feeling in October 2001. I must say, I did not imagine at that time that reasonable minds would begin to prevail so soon. Now 2 years later, we have a strong bipartisan effort to change these provisions, and I am pleased to see that. I look forward to working with Senator CRAIG and my other colleagues on both sides of the aisle to get the bill passed.

I am still very troubled by the administration's response to legislative efforts, such as those I just mentioned, and to the public's outcry to repeal or modify the PATRIOT Act. The administration has launched an effort to defend the PATRIOT Act, but its defense only tells the American people half the story at best. Its PR campaign eagerly describes the new powers the PATRIOT Act gives to law enforcement, but it doesn't say anything about what the law potentially takes away from the American people: our liberty and our privacy.

Perhaps most disturbing, the administration's campaign fails to seriously address section 215, which I have long seen as the act's most troubling provision. Both my bill and the Craig bill contain the same proposal to modify this provision. Section 215 allows the FBI access to the private details of the lives of law-abiding Americans—which books we have checked out from the library, what our medical records reveal, and what charges we have made on our credit cards. Americans reasonably expect the details of their private lives, from what they read to what drugs they have been prescribed, to remain just that—private. The PATRIOT Act undermines that expectation.

Under section 215, all the FBI has to do is assert that the records are "sought for" an international terrorism or foreign intelligence investigation. As long as the FBI makes such an assertion—and it is just an assertion—the secret foreign intelligence court is required to issue an order allowing access to those records. The courts cannot review the merits of the subpoena request.

Both my bill and the Craig bill would simply require the FBI to set forth specific facts showing that the records sought relate to a suspected terrorist or spy. Thus, the Government could not ask, say, Amazon.com or e-Bay to turn over the records of law-abiding customers. It could, however, obtain records of those customers who are actually suspected terrorists. My bill would allow the FBI to follow up on legitimate leads by also respecting the privacy and civil liberties of law-abiding Americans.

The administration has recently asserted that the criticism of section 215 is baseless because this section has not yet been used since it was enacted. The

administration says that librarians concerned about access to Americans' reading records are hysterics and have been duped by civil rights advocates and Members of Congress.

I am disappointed that the administration would use such rhetoric. No one has been duped, and the people concerned about their privacy are not in hysterics. They are simply worried, as I am, about the Government possessing a power that has the potential to intrude on their civil liberties, particularly since the statute itself prohibits a library, bookseller, or anyone else who has been served a subpoena from making that information public.

What I said before the PATRIOT Act was passed, and continue to maintain now, is that section 215 presents the potential for abuse.

I will say it again, because I cannot emphasize this enough, section 215 presents the potential for abuse. Regardless of whether the provision has not yet been used, that potential still exists, and the public has a reason to be concerned. No amount of ridicule or spin can change that.

The recent disclosure that section 215 has never been used does not address the concern that it could be used in a way that would violate the privacy of innocent Americans. But it does raise another question: If the section has never been used in the 2 years since the bill was passed, the 2 years immediately following the September 11 attacks, when concern over terrorism has been at its peak, including numerous periods of orange alert status, then why is this provision even on the books? Or at the least, what possible objection could there be to modifying it so that the potential for abuse is eliminated?

Both my bill and the Craig bill would protect the rights of law-abiding citizens by limiting the FBI's access only to information that pertains to suspected terrorists or spies. Our legislation recognizes the legitimate uses of section 215 and would not interfere with the use of the provision to investigate and prevent terrorism.

I urge the administration to open an honest dialogue with Congress and the American people to address the PATRIOT Act's specific problems instead of continuing to try to sell it. We do not need a government that forces its authority on the people and rejects and ridicules legitimate, heartfelt, and principled criticism of its actions and its laws. That is what our Founding Fathers strived to ensure would never happen again. The Federal Government should be responsive and accountable to the people. But most importantly, the Federal Government should respect and uphold the Constitution.

Unfortunately, the administration has not only failed to engage in an honest dialogue about the PATRIOT Act, but it now proposes that Congress grant to it even more power. The American people have expressed very legitimate and sincerely-held concerns

about the PATRIOT Act. The administration should answer those concerns honestly and forthrightly before seeking more power.

The administration has announced its support for three legislative proposals to expand executive branch power and diminish the role of judges, an essential part of our Nation's system of checks and balances. One proposal grants the Attorney General significant power to compel people to testify or the production of documents, all without prior court approval. A second proposal broadens the presumption of pretrial detention to cases that may not even involve terrorism. Finally, the third proposal expands the Federal death penalty.

Criticism of the PATRIOT Act appears to have had the effect of influencing the administration's strategy to secure this new power, but not the substance of its effort. Rather than proposing a single bill with various provisions to expand the PATRIOT Act, the administration instead appears to have given its blessing to many little "PATRIOT IIs."

The administration is apparently reluctant to allow these proposals to be linked to the PATRIOT Act. In fact, the Justice Department has even tried to suggest that they are unrelated. No one is fooled, however, least of all the American people. The fact is that these proposals did appear in the draft "Patriot II" leaked earlier this year and entitled the Domestic Security Enhancement Act.

"Patriot II," whether contained in one bill or a series of bills, is the wrong response at the wrong time. An increasing number of Americans want to know exactly how this administration is using the powers it already has and want the PATRIOT Act to be amended to protect privacy and civil liberties.

The burden is on the administration to show Congress and the American people why current law is inadequate, why it needs even more power, and how the powers it already has and the new powers it seeks are consistent with the Constitution and Bill of Rights.

That would be the patriotic thing to do.

I yield the floor.

The PRESIDING OFFICER. The Senator from Nevada.

Mr. REID. Would the Chair announce, under the additional time we have until 11:30, how much time the minority has remaining?

The PRESIDING OFFICER. The minority has 7 minutes 17 seconds remaining.

Mr. REID. How about if we add in the time for the second hour? Is it 32 minutes or something like that?

The PRESIDING OFFICER. After this, there will be 50 minutes equally divided.

Mr. REID. So it would be about 32 minutes. I ask unanimous consent that during our time the Senator from Michigan, Ms. STABENOW, be recognized for 9 minutes; Senator HARKIN for 9

minutes; Senator CORZINE for 9 minutes; and Senator BINGAMAN for 4 minutes. That will basically use up all of our time.

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

Mr. REID. I ask unanimous consent that we alternate back and forth if, in fact, there are people from the majority; otherwise, it would be in the order that I have mentioned.

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

The Senator from Michigan is recognized for 9 minutes.

#### MEDICARE AND PRESCRIPTION DRUGS

Ms. STABENOW. Mr. President, I rise today to speak about the issue of Medicare and prescription drugs and where we are as we have been working to develop a prescription drug benefit for seniors and put in place plans that would lower prices on prescription drugs for everyone: Businesses, individuals, workers, families.

We are at a crossroads. We have been working many hours in a bipartisan way in this body, trying to come to a positive conclusion on the question of Medicare and prescription drugs. There are wide differences in philosophy and approach, particularly with our colleagues on the Republican side of the aisle in the House of Representatives. I am deeply concerned about the direction that the conference committee appears to be going as it relates to the fundamental issue of whether we will continue to have Medicare as we know it in the future.

We all know that Medicare was put into place in 1965 because at least half of our seniors could not find or could not afford prescription drug coverage and health care in the private sector. They could not find or afford health care in the private sector. So this Congress and the President at that time came together and did something I think is one of the most significant actions of modern age for the people of the country, and that is to create health care for seniors, for those over age 65, and for the disabled of this country, a guarantee that we would make a commitment together and fund a system for older Americans and the disabled to have access to health care in this country. It has made all the difference in terms of quality of life for our citizens.

We now are at a juncture where we have seen a proposal passed as part of the House package that would essentially do away with Medicare as we know it. Instead of it being a defined benefit, meaning it does not matter where a person goes, whether they are going to New Jersey, Iowa, or Michigan, or what part of Michigan they live in, whether they live in the Upper Peninsula, Detroit, Benton Harbor, or Lansing, they could count on Medicare. They know what it will cost. Their provider knows what they will be paid for

the service. It is a system that is universal, and it works.

What we are hearing now is that there is a great desire, unfortunately, among, again, predominately our colleagues in the House, in the majority, who are saying that system should be radically changed. Instead of having Medicare, which is dependable, affordable, reliable—we know what it is; seniors can choose their own doctors; providers know what the payment will be—they want to change it to what is called premium support.

Now, what does that mean? Essentially, it is like a voucher. They want Medicare to essentially say a person has X amount of dollars for their health care, and if it costs more than that, they pay that. If, in fact, they want to take that and go to an HMO or PPO, that is what would be encouraged. People would be pushed more and more into an HMO or a PPO in order to save dollars, but for most of our citizens that would not be available.

The House basically wants to say that Medicare, as we know it, will no longer be available, and it will be privatized. Folks will be given a lump sum of dollars, and then they are on their own. If they are sicker, if they need more help, they would not be covered for that additional health care they need. There would only be a set amount of dollars or essentially the equivalent of a voucher. This completely undermines what we have put in place for Medicare. The idea that we would say to our seniors, You have health care; you can rely on it; you can count on it; you don't have to worry about it, that would all be taken away with this proposal to undermine Medicare and to essentially turn it back to the private sector.

This is something I find absolutely unacceptable and I will do whatever I can to stop it, and I know on our side of the aisle there is overwhelming opposition to this notion of doing anything that would undermine and weaken Medicare for our seniors.

We know, according to a study that was just done, this proposal could increase the costs for the majority of our seniors who are in traditional Medicare by as much as 25 percent or more. I should mention the majority of seniors, when given the choice between a private plan—in this case Medicare+Choice—or staying in traditional Medicare, they have overwhelmingly chosen to stay in traditional Medicare. In fact, 89 percent of our seniors already voted. If we just want to look at who is covered and who we are trying to help for the future, we should look at what they are saying.

Mr. President, 89 percent of our seniors have chosen to stay in traditional Medicare. Only 11 percent have chosen to go into the private sector. Yet we are seeing an overwhelming push to force people to go into the private sector through a scheme that would privatize Medicare, even though it will cost them more money, even though it is not dependable.