hockey team, which I must acknowledge as a Yale graduate defeated Harvard 6 to 2 in the finals, much to my enormous satisfaction, but just had a terrific year, it was rated No. 1 throughout the year and prevailed in the national championship. It shows, as the Senator noted, women's basketball is the same as women's hockey. Under the auspices of title IX and the opportunities now that have been given to women athletes starting as young girls, they have equal opportunity to play these sports. Their talents and skills are every bit as good as men's, and they are phenomenal athletes and delights to watch as they play these games with the highest level of proficiency. It is something that as Americans we should be proud of, the fact that we have made that advance and that girls are no longer relegated to being cheerleaders for men's sports or boys' sports, as they were when I was growing up, but now have shown themselves to be remarkable athletes in their own right far advanced to anything that I could have accomplished as a meager athlete back in my day.

So I will see the Senator at the White House.

Mr. DODD. If my colleague would yield, and I appreciate the comments and give congratulations, the Minnesota women's team is a great team. In fact, a mutual friend of ours, a former member of the other body and I, Rick Nolan, who my colleague knows very well, talked the other night, and after the game he told me that Geno Auriemma, coach of the women's team, was quoted extensively in the Minnesota newspapers and radio stations on commending the Minnesota team. He said it reminded him very much of an earlier UConn women's basketball team when they were starting out. I cannot tell the Senator how impressed I was with Miss Whalen and Miss McCarville. They are great players. I love their tenacity and emotion. Your coaches—you have had three coaches in 3 years—have had some difficult times to go through. I thought the game between Minnesota and Duke was one of the great women's basketball teams of all time. I suspect we are going to hear a lot more from Minnesota not only in hockey but in basketball as well.

I am glad my colleague mentioned title IX. I meant to mention it as well. Back in January, I invited a former colleague of ours, Birch Bayh of Indiana, to come to Connecticut to a women's basketball game. The reason I invited our former colleague and the father of our present colleague, EVAN BAYH, was because in 1972, Birch Bayh was the author of title IX. There were a lot of other Members involved; I do not want to suggest he was the only one, but he was the principal author of title IX. I thought he might like to come and watch what a change he had made in America.

It was not solely because of Birch Bayh, but he certainly deserves to be recognized for authoring that bill. To give my colleague some idea, about 15 years ago a national championship game for the women's basketball game drew maybe 1,500 people. Last night, there were 19,000 people in New Orleans to watch the game. I suspect millions across the country were tuned in to watch Tennessee and the University of Connecticut play.

So we brought Birch Bayh to Connecticut on that day when the University of Connecticut was playing Notre Dame. We had about 15,000 people on hand that afternoon, and at halftime we had some of the leaders of the women's teams over the years. We had a group of younger women just starting out at center court. Birch Bayh received a standing ovation from 15,000 people in Connecticut because he made a difference in this sport.

As my colleague has said, to see fathers and daughters, fathers and granddaughters, young boys and sisters coming to watch these young, remarkable women athletes, created a change in our country for the better. I look forward to the day when we will gather at the White House—I am confident President Bush will do this again because of his great love of sport—when he invites the men's and women's basketball teams from the University of Connecticut. Let me go on record today inviting, as well, not only the women's hockey team from Minnesota but the men's hockey team from Minnesota.

I thank my colleague for his nice compliments about Connecticut.

Mr. DAYTON. I thank my colleague. I think we are in a position where we can come to an agreement on that. I am not sure many of our colleagues would agree, but the Senator is right. In fact, I read over the weekend that the women's semifinal basketball games outdrew the men's in the national televised audience. That is not to say anything disparaging about the men because they had an outstanding tournament as well. It shows the popularity of the sport among all Americans. Certainly, the skill level to which it is played is something that anybody, even a couch potato like this Senator, can enjoy.

The Senator is right, also, that the President has been extremely gracious in hosting these teams. I think he recognizes how much of a thrill it is for the teams that have dedicated themselves all year to this level of national proficiency to be able to be recognized by the President of the United States; it is a great achievement for all of them. I look forward to the President's invitation. He has been very gracious in the past, and I look forward to joining my friend, the Senator from Connecticut.

Mr. President, I yield the floor.

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

The PRESIDING OFFICER. The clerk will call the roll.

The assistant legislative clerk proceeded to call the roll.

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

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

SAFE ACT

Mr. DURBIN. Mr. President, I rise today to urge my colleagues to cosponsor S. 1709, the Security and Freedom Ensured Act, the SAFE Act, which Senator LARRY CRAIG and I have introduced with several of our colleagues from both sides of the aisle.

The SAFE Act is a narrowly tailored bill that would revise several provisions of the USA PATRIOT Act. It would safeguard the rights of innocent Americans without impeding law enforcement's ability to fight terrorism. The SAFE Act is supported by a broad coalition of organizations and individuals from across the political spectrum.

I challenge any of my colleagues to find the broad base of political support for virtually any bill that we have found for the SAFE Act.

I voted for the PATRIOT Act. I believed then and I still believe that the act made many reasonable and necessary changes in the law. However, the PATRIOT Act contains several provisions that do not adequately protect innocent Americans from unwarranted Government surveillance. The FBI now has broad authority to obtain a ''John Doe'' roving wiretap which does not identify the person or place being tapped. The FBI has authority now to conduct sneak-and-peek searches and to seize personal records.

The PATRIOT Act was passed at a critical moment in the history of the United States. It was a moment of tragedy and fear. Now with more than 2 years of hindsight and experience, it is time to revisit this law.

I can recall—and I am sure all who followed this debate can remember—how we felt after September 11. Just a few steps away from this Chamber, I was meeting in a room with Senator DASCHLE and a group of Senators and we saw on television the images which every American has seared in their memory. Then someone suggested a bomb had gone off at the Pentagon. We gathered by the windows and looked down this beautiful Mall toward the Washington Monument and saw black smoke billowing across the Potomac, unaware at that moment another airplane had struck that building, killing many innocent Americans.

It was a time of great concern and great anxiety and great unity. The administration came to us and said to the Congress, Give us the tools to find the people responsible for this terrible American tragedy. Give us what we need to protect Americans and to fight the war on terrorism.

In a rare showing of bipartisan support, Democrats and Republicans came together and addressed some of the most difficult and complicated questions about Government authority and

individual freedom we have had to address in our history. I am proud to say in a short period of time there was a bipartisan consensus, a consensus which tried to work out the best way to meet the requirements of the administration and to make America safe.

Many of these provisions were worrisome. We were not certain whether we had gone too far in giving the Government more authority and Americans fewer freedoms than necessary. So we included in the PATRIOT Act sunset provisions. Basically, what that means is that over some period of time, a year or two, these provisions would expire and be subject to renewal and reapproval by Congress. Of course, at that point we would be forced to assess their impact.

Interestingly, since that day, from some quarters, the volume has grown in support of basically eliminating the sunset provisions and saying this will be permanent law and we will not revisit it. However, many have looked at the PATRIOT Act, including Senator CRAIG and myself, and feel there are four specific areas of the Act that should be amended by our SAFE Act. Senator CRAIG, a Republican, and myself, as a Democrat, reached across the partisan divide to work together on this bill. It is quite an unusual political marriage. Senator JOHN SUNUNU, also a cosponsor, joked that when Senator CRAIG and Senator DURBIN introduce a bill together, it proves one thing: One of them must not have read it.

Well, that is not true. We have both read the SAFE Act. Our cooperation on this piece of legislation speaks volumes about the need to make changes in the PATRIOT Act.

Some claim because we are at war, the American people want the Government to keep them safe, no matter what. I think they are wrong. The American people care very deeply about their freedoms. They are watching Congress carefully and they are concerned that perhaps in some areas we went too far in passing the PATRIOT Act. I have heard from a lot of my constituents. 275 communities in 39 states have passed resolutions expressing concern about the provisions of the PATRIOT Act. These communities represent close to 50 million Americans. Almost one out of every six Americans has, through their elected representatives in their communities, expressed some concern about the provisions of the PATRIOT Act.

Let me be very frank about the bill itself. The PATRIOT Act was over 130 pages long. It is very complicated. Most Americans have not read every word of it. Many Americans who may not be able to explain the exact details of the PATRIOT Act still are concerned it is restricting their freedoms unnecessarily.

Some argue this means we should not take the American people so seriously because they cannot cite specific sections of the bill. I disagree. There is no reason to dismiss these public concerns. And this is no excuse for inaction. The burden of proof is not on the American people when the Government seeks to take away their rights and liberties. The burden of proof is on the Government.

What is clear is the American people want us to strike a balance, give the FBI and law enforcement and intelligence agencies the powers they need to fight terrorism but also to protect American liberty. That is what the SAFE Act would do.

An unusual thing has occurred with the introduction of this bill. I have been on Capitol Hill for over two decades working in the House and in the Senate. I have never seen this happen before. The Bush administration announced with the introduction of the bill they would veto it. The bill has not been considered before a committee. It has not been subject to amendment in committee. It has not been debated in committee. It has not come to the floor of the House or the Senate, nor has it been subject to debate and amendment there. There is no final work product, only the initial offering by Senator CRAIG and myself.

Based on that and that alone, the Bush administration has said they are going to oppose this bill and they are going to veto this bill. I have never seen anything quite like that.

The Justice Department argues our bill would eliminate some PATRIOT Act powers and make it even more difficult to effectively fight terrorism. Frankly, these objections do not hold water. The SAFE Act neither repeals any provision of the PATRIOT Act nor amends pre-PATRIOT Act law. In fact, the SAFE Act retains the expanded powers created by the PATRIOT Act while placing important checks on these powers.

Senator CRAIG and I wrote a letter responding in detail to the Justice Department's objections to the bill and their threat to veto the bill, which has not even passed either the House or the Senate.

I ask unanimous consent that this letter be printed in the RECORD.

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

U.S. SENATE,
COMMITTEE ON THE JUDICIARY,
Washington, DC, February 23, 2004.

Hon. ORRIN G. HATCH,
Chairman, Senate Committee on the Judiciary, Hart Senate Office Building, Washington, DC.

DEAR MR. CHAIRMAN: We write to request that you schedule a hearing in the Judiciary Committee as soon as possible on S. 1709, the Security and Freedom Ensured (SAFE) Act, a narrowly-tailored, bipartisan bill that would amend several provisions of the USA PATRIOT Act (P.L. 107–56). We would also like to take this opportunity to respond to concerns the Justice Department has raised regarding the SAFE Act.

We voted for the PATRIOT Act and believe now, as we did then, that the PATRIOT Act made many reasonable and necessary changes in the law. However, the PATRIOT Act contains several provisions that create unnecessary risks that the activities of innocent Americans may be monitored without adequate judicial oversight.

This concern is shared by a broad coalition of organizations and individuals from across the political spectrum. In fact, 257 communities in 38 states—representing approximately 43.5 million people—have passed resolutions opposing or expressing concern about the PATRIOT Act. Groups as politically diverse as the ACLU and the American Conservation Union have also endorsed changes in the law.

In his State of the Union address, the President called for reauthorization of the PATRIOT Act. Given the bipartisan concerns about the most controversial provisions of the law, however, this will not happen unless these provisions are revisited. Congress, in fact, made oversight of the PATRIOT Act implicit by sunsetting over a dozen sections of the bill at the time of its passage.

S. 1709, the SAFE Act, was drafted with this oversight in mind. It was drafted to clarify and amend in a minor way the PATRIOT Act's most troubling provisions so that whole or even piecemeal repeal of the law would be unnecessary. It was drafted to safeguard the liberties of law-abiding citizens while preserving the law enforcement authorities essential to a successful war on terror.

The Administration unfortunately has threatened to veto the SAFE Act. The Justice Department argues that the SAFE Act would ''eliminate'' some PATRIOT tools and ''make it even more difficult to mount an effective anti-terror campaign than it was before the PATRIOT Act was passed.''

We respectfully disagree with the Justice Department's objections to our reasoned and measured effort to mend the PATRIOT Act. The SAFE Act neither repeals any provision of the PATRIOT Act, nor impedes law enforcement's ability to investigate terrorism by amending pre-PATRIOT Act law. Rather, the SAFE Act retains the expanded powers created by the PATRIOT Act while restoring important checks and balances on powers including roving wiretaps, ''sneak and peek'' warrants, compelled production of personal records, and National Security Letters.

ROVING WIRETAPS

The SAFE Act would place reasonable checks on the use of roving wiretaps for intelligence purposes. Normally, when the government seeks a warrant authorizing a wiretap, its application must specify both the target (the individual) and the facilities (the telephone or computer) that will be tapped. Roving wiretaps, which do not require the government to specify the facilities to be tapped, are designed to allow law enforcement to tract targets who evade surveillance by frequently changing facilities. Before the PATRIOT Act, roving wiretaps were only permitted for criminal, not intelligence, investigations. The PATRIOT Act authorized the FBI to use roving wiretaps for intelligence purposes for the first time.

Using roving wiretaps for intelligence purposes is important. Unfortunately, the PATRIOT Act did not include sufficient checks to protect innocent Americans from unwarranted government surveillance. Under the PATRIOT Act, the FBI is not required to determine whether the target of the wiretap is present at the place being wiretapped, as it is for criminal wiretaps.

The Intelligence Authorization Act of 2002 made another dramatic change in the law. The FBI is now permitted to obtain a ''John Doe'' roving wiretap for intelligence purposes, an authority not authorized in any other context. A ''John Doe'' roving wiretap does not specify the target of the wiretap or

the place to be wiretapped. In other words, the FBI can obtain a wiretap without saying whom they want to wiretap or where they want to wiretap.

The Justice Department defends this authority by noting that even if the target of the wiretap is not identified, a description of the target is required. The law does not require the description to include any specific level of detail, however. It could be as broad as, for example, ''white man'' or ''Hispanic woman.'' Such a general description does not adequately protect innocent Americans from unwarranted government surveillance.

The SAFE Act would retain the PATRIOT Act's authorization of roving wiretaps for intelligence purposes but impose reasonable limits on this authority. Law enforcement would be required to ascertain the presence of the target before beginning surveillance and identify either the target of the wiretap or the place to be wiretapped. The FBI would not be able to obtain ''John Doe'' roving wiretaps, thereby ensuring that the government does not surveil innocent Americans who are not the target of the wiretap.

The Justice Department argues that ''John Don'' roving wiretaps are necessary because there may be circumstances where the government knows a target's physical description but not his identity. If the government is tracking a suspect closely enough to utilize a wiretap, it is unlikely his or her identity will be unknown to them. In this unusual circumstance, the SAFE Act would permit the issuance of a ''John Doe'' wiretap which would not identify the target but rather the facilities to be wiretapped. If the government wished to obtain a roving wiretap, they could do so by identifying the target. It is important to note that the government is not required to identify the target by his or her actual name. The government, for example, could identify the target by an alias. This level of detail should be required to make clear who is being targeted to prevent innocent people with no relationship to the target from being spied upon.

''SNEAK AND PEEK'' SEARCHES

The SAFE Act would impose reasonable limits on the issuance of delayed notification (or ''sneak and peek'') search warrants. A sneak and peek warrant permits law enforcement to conduct a search without notifying the target until sometime after the search has occurred. The Justice Department argues that sneak and peek warrants for physical evidence ''had been available for decades before the PATRIOT Act was passed,'' but such warrants were never statutorily authorized before the passage of the PATRIOT Act. Too, though some courts have permitted sneak and peek warrants in limited circumstances, the Supreme Court has never ruled on their constitutionality.

In codifying sneak and peek warrants, Section 213 of the PATRIOT Act did not adopt limitations on this authority that courts had recognized. For example, courts have required a presumptive seven-day limit on the delay of notice. Section 213 requires notice of the search within ''a reasonable period,'' which is not defined. According to the Justice Department, this has resulted in delays of up to 90 days, and of ''unspecified duration lasting until the indictment was unsealed.''

Section 213 authorizes issuance of a sneak and peek warrant where it finds that providing immediate notice of the warrant would have an ''adverse result,'' as defined by 18 U.S.C. Section 2705. Section 2705, which allows delayed notice for searches of stored wire and electronic communications, defines adverse result very broadly, including any circumstances ''otherwise seriously jeopardizing an investigation or unduly delaying a trial.'' This catch-all provision could arguably apply in almost every case. A sneak and peek search of a home involves a much greater degree of intrusiveness than a seizure of wire or electronic communications, so this broad standard for delaying notice is inappropriate. Section 213 also does not limit delayed notification warrants to terrorism investigations, and unlike many surveillance-related PATRIOT Act provisions, does not sunset.

Last year, an overwhelming majority in the House of Representatives voted to repeal Section 213. The SAFE Act would not go nearly this far. It would place modest limits on the government's ability to obtain sneak and peek warrants, while still permitting broad use of this authority.

The SAFE Act would still authorize a sneak and peek warrant in a broad set of specific circumstances: where notice of the warrant would endanger the life or physical safety of an individual, result in flight from prosecution, or result in the destruction of or tampering with the evidence sought under the warrant. Importantly, it would eliminate the catch-all authorization of sneak and peek authority in any circumstances ''otherwise seriously jeopardizing an investigation or unduly delaying a trial.'' It would require notification of a covert search within seven days, but would authorize unlimited additional seven-day delays so long as any circumstance that would justify a delay of notice continues to exist. According to the Justice Department, ''the most common period of delay'' under Section 213 is seven days, so a seven-day limit with court-authorized extensions is not overly onerous but would prevent abuse.

The Justice Department states that the SAFE Act imposes restrictions on the issuance of sneak and peek warrants that could tip off terrorists, and ''thus enable their associates to go into hiding, flee, change their plans, or even accelerate their plots.'' To the contrary, the SAFE Act would authorize issuance of a sneak and peek warrant in all of these circumstances. If notice of the warrant could lead terrorists or their associates to hide or flee, a court could delay notice to prevent flight from prosecution. If notice of the warrant could lead terrorists or their associates to change or accelerate their plots, a court could delay notice to prevent the resulting danger to life or physical safety. The Constitution protects the sanctity of our homes, and we should only allow this sanctity to be breached in such serious circumstances.

COMPELLED PRODUCTION OF PERSONAL RECORDS

The SAFE Act would place reasonable checks on the government's authority to compel production of library and other personal records. Section 215 of the PATRIOT Act permits law enforcement to obtain such records without individualized suspicion and with minimal judicial oversight. Before the PATRIOT Act, FISA authorized the FBI to seek a court order for the production of records from four types of businesses: common carriers, public accommodations facilities, physical storage facilities, and vehicle rental facilities. In order to obtain such records, the FBI was required to state specific and articulable facts showing reason to believe that the person to whom the records relate was a terrorist or a spy. If a court found that there were such facts, it would issue the order.

Under FISA as modified by Section 215, the FBI is authorized to compel production of ''any tangible things (including books, records, papers, documents, and other items)'' not just records, from any entity, not just the four types of businesses previously covered. The FBI is only required to certify that the records are ''sought for'' an international terrorism or intelligence investigation, a standard even lower than relevance. The FBI need not show that the documents relate to a suspected terrorist or spy. If the FBI makes the required certification, the court no longer has the authority to examine the accuracy of the certification or ask for more facts to support it; the court ''shall'' issue the order. Defenders of Section 215 frequently assert that the issuance of an order for records requires court approval, but this type of court approval amounts to little more than a rubber stamp. The PATRIOT Act gives the government too much power to seize the personal records of innocent Americans who are not suspected of involvement in terrorism or espionage.

The SAFE Act retains the PATRIOT Act's expansion of the business records provision to cover ''any tangible things'' and any entity. It would reinstate the pre-PATRIOT Act standard for compelling production of business records, which requires individualized suspicion. The FBI would be required to certify that there are specific and articulable facts giving reason to believe that the person to whom the records relate is a terrorist or a spy. A court would be required to issue the order if it found that there are such facts. The SAFE Act would thus prevent broad fishing expeditions which waste scarce government resources, are unlikely to produce useful information, and can infringe upon privacy rights.

The Justice Department argues that this standard is inappropriate because it is higher than the relevance standard under which federal grand juries can subpoena records. This ignores some crucial distinctions. The recipient of a grand jury subpoena can challenge the subpoena in court and tell others, including those whose records are sought, about the subpoena. In contrast, the recipient of a Section 215 subpoena cannot challenge the subpoena in court and is subject to a gag order. The scope of a federal grand jury is limited to specific crimes, while an intelligence investigation is not so limited.

Finally, it is very important to note that, in the more than two years since the passage of the PATRIOT Act, Section 215 has never been used. If the authority has never been used during this time of great national peril, it is difficult to understand how imposing some reasonable checks on it could cripple the war on terrorism. Indeed, the government offers no examples, real or imagined, in which the SAFE Act's revisions of Section 215 would hinder counterterrorism efforts.

NATIONAL SECURITY LETTERS

The SAFE Act would impose reasonable limits on the issuance of National Security Letters (NSLs). Section 505 of the PATRIOT Act allows the FBI to use NSLs to obtain personal records without individualized suspicion. An NSL is a document signed by an FBI agent requiring disclosure of financial, credit and other personal information and requiring the recipient not to disclose the request to the individual whose records are being sought. It does not require judicial or grand jury approval.

Before the PATRIOT Act, the FBI could issue an NSL to obtain records from a wire or electronic communication service provider by certifying that it had reason to believe that the person to whom the records relate is a terrorist or a spy. The approval of FBI headquarters was required.

Section 505 of the PATRIOT allows the FBI to issue an NSL simply by certifying that the records are ''sought for'' a terrorism or intelligence investigation, regardless of whether the target is a suspect. Headquarters approval is no longer required. Unlike many other surveillance-related PATRIOT Act provisions, the expanded NSL authority does not sunset.

The SAFE Act would retain the PATRIOT Act's lower standard for the issuance of NSLs and its delegation of issuing authority to field offices. It would simply clarify that a library is not a ''wire or communication service provider,'' which from the plain meaning of the words, it is not. The FBI could still obtain information regarding e-mails or other communications that took place at libraries by issuing an NSL to the library's wire or communication service provider.

The Justice Department states that the SAFE Act would ''extend a greater degree of privacy to activities that occur in a public place than to those taking place in the home.'' We disagree. The SAFE Act would simply ensure that the FBI issues the NSL to the service provider, which is the appropriate recipient, rather than a community library, which is ill-equipped to respond to such a request.

EXPANDING THE SUNSET CLAUSE

The SAFE Act would expand the sunset clause of the PATRIOT Act to ensure Congress has an opportunity to review provisions of the bill that greatly expand the government's authority to conduct surveillance on Americans. Many of the PATRIOT Act's surveillance provisions sunset on December 31, 2005. The SAFE Act would sunset four additional surveillance provisions: Sections 213, 216, 219, and 505.

We have already discussed Sections 213 (sneak and peek warrants) and 505 (national security letters). Section 216 allows the use of surveillance devices known as pen registers and trap and trace devices to gather transactional information about electronic communications (e.g., e-mail) if the government certifies the information likely to be gathered is ''relevant'' to an ongoing criminal investigation. The information the government gathers is ''not to include the contents'' of communications, but content is not defined. Section 219 permits a federal judge in any district in the country in which ''activities related to terrorism may have occurred'' to issue a nationwide search warrant in a terrorism investigation. The target of such a search warrant has no ability to challenge the warrant in their home district. The SAFE Act would simply give Congress an opportunity to assess the effectiveness of these four provisions before deciding whether or not to reauthorize them.

The Justice Department argues that Congress should not expand the sunset to these authorities because they will all be needed by the FBI for ''the foreseeable future.'' Even if this is true, it is no reason not to give Congress the chance to review the usefulness of these powers. If they are needed for the fight on terrorism, we will surely renew them.

Throughout American history, during times of war, civil liberties have been restricted in the name of security. We therefore have the responsibility to proceed cautiously. During the Civil War, President Lincoln suspended habeas corpus, and during World War II, President Roosevelt ordered the detention of Japanese Americans in internment camps. We must be vigilant in our defense of our freedoms. But we also must ensure that law enforcement has sufficient authority to combat the grave threat of terrorism. We must strike a careful balance between the law enforcement power needed to combat terrorism and the legal protections required to safeguard American liberties. That is what the SAFE Act would do.

While we are disappointed that the Administration has expressed disagreement with the SAFE Act, we view this as an opportunity for increased public discussion of one of the most important issues of our day. Accordingly, we request that you schedule a hearing on the SAFE Act as soon as possible. Thank you for your time and consideration.

Sincerely,

LARRY E. CRAIG,
U.S. Senator.
RICHARD J. DURBIN
U.S. Senator.

Mr. DURBIN. Mr. President, let me cut through some of the rhetoric and tell you what the SAFE Act does.

The SAFE Act would place reasonable checks on what are known as roving wiretaps. Typically, when the Government seeks a warrant authorizing a wiretap, its application must specify the individual and the phone that will be tapped. A recommendation on roving wiretaps came to us in the PATRIOT Act because of the obvious: There was a time and place in America when people had one telephone at work, one telephone at home, and if the Government sought to tap that telephone to find out what was going on, it was pretty obvious which telephone lines needed to be tapped. Now we live in a different world where people carry around phones in their pockets. People may have several phones.

So the Government asked for additional authority to focus on those who were engaged in telephone conversations on numerous different telephone lines. Roving wiretaps do not require the Government to specify the phone being tapped. They are designed to allow law enforcement to track targets that evade surveillance by frequently changing phones.

Before the PATRIOT Act, they were only permitted for criminal investigations, not intelligence investigations. The PATRIOT Act authorized the FBI to use roving wiretaps for intelligence purposes for the first time. I supported this. I thought it was a reasonable expansion of wiretap authority because it is important that intelligence investigators have that authority.

Unfortunately, the PATRIOT Act did not include the same limits on these powers that exist for criminal investigations. These limits would have protected innocent Americans from unjustified surveillance. It is a basic tenet of law that if you are going to tap a conversation, the Government has to be specific enough so as to protect innocent people. We should not allow the Government at any given time to impose a wiretap on a phone that anybody might use. The Government should be specific, protecting in the process the privacy of innocent people, while clearly targeting those with a wiretap who could be guilty of a crime or guilty of activities that are treasonous.

Under the PATRIOT Act, the FBI is not required to determine whether the target of the wiretap is physically present at the location being wiretapped before beginning the wiretap, as it is for criminal wiretaps. The ascertainment requirement, as it is known, ensures innocent Americans are not wiretapped unnecessarily, especially when the FBI wiretaps a public telephone.

The FBI is now permitted to obtain a John Doe roving wiretap for intelligence purposes, a sweeping authority never before authorized by Congress. A John Doe roving wiretap does not specify the person or the phone to be wiretapped. In other words, the FBI can obtain a wiretap without telling a court whom they want to wiretap and where they want to wiretap. This is a virtually limitless power.

The SAFE Act, which we have introduced, would continue to authorize roving wiretaps for intelligence purposes but would impose reasonable limits, the same limits that exist for criminal investigations. Law enforcement would be required to determine whether the target of the wiretap is physically present before beginning the wiretap. The FBI would not be able to obtain ''John Doe'' roving wiretaps. These protections would ensure that the Government does not wiretap innocent Americans.

Secondly, the SAFE Act would impose reasonable limits on sneak-and-peek searches. Sneak-and-peek searches are conducted secretly by the FBI with no notice to the target until some time after the search.

You have all seen the scene on television—maybe you are familiar with it from your community—where there is a knock on the door and a law enforcement official says: I have a warrant to search your home. Well, that is the usual course of events in criminal investigations. It is much different when it comes to sneak-and-peek searches.

The Justice Department argues that warrants for sneak-and-peek searches ''had been available for decades before the PATRIOT Act was passed,'' but such warrants were never authorized by Congress before the passage of the PATRIOT Act. Some courts permitted sneak-and-peek warrants in limited circumstances, although the Supreme Court has never ruled on their constitutionality.

In authorizing sneak-and-peek warrants, section 213 of the PATRIOT Act did not include checks and limitations on the power of the Government so as to protect innocent Americans. Courts have required the FBI to notify the target of the search within 7 days of the search. Section 213 of the PATRIOT Act, however, requires notice of the search only within ''a reasonable period,'' which is not defined. According to the Justice Department, this has resulted in delays of notice of up to 90 days, and of ''unspecified duration.''

Section 213 authorizes sneak-and-peek searches where a court finds that providing immediate notice of the search would have an adverse result. ''Adverse result'' is defined broadly. It includes circumstances ''seriously jeopardizing an investigation or unduly delaying a trial.'' This catch-all provision could arguably apply in almost every case.

Unlike many other PATRIOT Act provisions that give new surveillance powers to the FBI, the sneak-and-peek

authority does not sunset. It is permanent law.

According to a recent poll, 71 percent of Americans disapprove of the current sneak-and-peek provision in the PATRIOT Act. Last year, an overwhelming, bipartisan majority in the House of Representatives voted to repeal this section of the PATRIOT Act. The SAFE Act that we introduce would not go nearly that far. It would place reasonable limits on the FBI's ability to conduct sneak-and-peek searches, while still permitting broad use of this authority.

The SAFE Act would still authorize sneak-and-peek searches in a broad set of specific circumstances. However, it would eliminate the catch-all provision that allows sneak-and-peek searches in any circumstances.

The SAFE Act would require notification of a covert search within 7 days but would authorize a court to allow unlimited additional 7-day delays upon application by the Government. According to the Justice Department, ''the most common period of delay'' under section 213 is 7 days, so this limit that we establish is not unreasonable.

The SAFE Act would also sunset the sneak-and-peek authority, giving Congress an opportunity to take a hard look at a provision in the law that is so widely unpopular in the United States.

The third area has received a lot of attention, and it relates to the compelled production of library and personal records.

The SAFE Act would place reasonable limits on the FBI's authority to compel production of library and personal records. Before the PATRIOT Act, the FBI was authorized to seek a court order for the production of records from four types of businesses—common carriers, such as airlines and trains and buses; public accommodations, such as hotels and restaurants; storage facilities; and car rental companies. In order to obtain records, the FBI was required to convince a court it had reason to believe that the person to whom the records related was a terrorist or a spy.

Under section 215 of the PATRIOT Act, the FBI can compel production of ''any tangible things,'' not just records, from any entity, not just the four types of businesses previously covered. The FBI, under the PATRIOT Act, is only required to certify that the records are ''sought for'' a terrorism or intelligence investigation, a standard even lower than relevance. The FBI is not required to show that the documents relate to a suspected terrorist or spy.

Now, those who defend section 215 frequently claim the FBI must obtain court approval to compel production of records, but if you read section 215, you will see that the type of court approval which is authorized is a rubber stamp.

The PATRIOT Act gives the Government too much power to seize the personal records of innocent Americans who are not suspected of involvement in any terrorism or espionage. This could lead to broad fishing expeditions which waste scarce Government resources, are unlikely to produce useful information, and can infringe upon privacy rights.

The SAFE Act would retain the PATRIOT Act's expansion of the records provision to cover ''any tangible things,'' as I said earlier, and any entity. But it would reinstate the pre-PATRIOT Act standard for obtaining records, which requires individualized suspicion and increased judicial oversight. The FBI would be required to convince a court that it has reason to believe that the person to whom the records relate is a terrorist or a spy. This would protect innocent Americans and prevent fishing expeditions by the Government.

It is very important to note that in the more than 2 years since the passage of the PATRIOT Act, section 215—compelling records, as I have described—has never been used. If the authority has never been used during this time of great national concern and peril, it is difficult to understand how imposing some reasonable checks could harm the war on terrorism.

The fourth and last section of the SAFE Act relates to national security letters. The SAFE Act would impose reasonable limits on the issuance of these letters. An NSL, as they are known, is a document signed by an FBI agent requiring disclosure of financial, credit, or other personal information. It can be issued to a wire or electronic communication provider. The recipient of an NSL is subject to a gag order and cannot disclose the request to the individual whose records are being sought. An NSL does not require judicial or grand jury approval.

Before the PATRIOT Act, the FBI could issue such a letter to obtain records by certifying it had reason to believe that the person to whom the records relate is a terrorist or spy. The approval of FBI headquarters was required.

Section 505 of the PATRIOT Act allows the FBI to issue a national security letter by certifying that the records are ''sought for'' a terrorism or intelligence investigation, regardless of whether the target is a suspect. FBI headquarters approval is no longer required.

Unlike many other surveillance-related PATRIOT Act provisions, this expanded NSL authority does not sunset under the law of the PATRIOT Act.

The SAFE Act would retain the PATRIOT Act's lower standard for the issuance of NSLs and its delegation of issuing authority to FBI field offices.

It would simply clarify that a library is not a ''wire or communication service provider,'' which, from the plain meaning of the words, it is not. The FBI could still obtain information regarding e-mails and other communications originating from library computers by issuing a national security letter to the library's wire or communication service provider.

The SAFE Act would simply ensure that the FBI issues the national security letter to the service provider, which is the appropriate recipient, rather than a community library, which is not equipped to respond to such a request.

We would also sunset this NSL authority, giving Congress another opportunity to take a look at it.

We have the responsibility to give the Government the power it needs to keep us safe, but at the same time we have a responsibility to the Constitution, which we have all sworn to uphold and defend, to zealously protect the personal freedoms and liberties of American citizens.

Geoffrey Stone, a professor and former dean at the University of Chicago Law School, made this observation:

> In time of war . . . we respond too harshly in our restriction of civil liberties, and then, later, regret our behavior. It is, of course, much easier to look back on past crises and find our predecessors wanting, than it is to make wise judgments when we ourselves are in the eye of the storm. But that challenge now falls to us.

We must meet this challenge head on. As we reflect on the course of history, there has hardly been a time in the history of the Nation when we faced great threats to our safety and security when the Government did not overreach.

The greatest President, I think, who ever served us, Abraham Lincoln, from my State of Illinois, during the course of the Civil War, suspended the writ of habeas corpus, basically gathering into prison suspects without any charges. It was clearly in violation of the language of the Constitution. It was a power he assumed as Commander In Chief, and many have questioned it in the years that have followed.

During World War I, when there was real concern about outside threats to our country, we established the Alien and Sedition Acts, laws passed by Congress and signed by the President which, on reflection, went too far.

In World War II, we had the Japanese internment camps. We took perfectly innocent Japanese Americans, simply because of their ancestry, and put them in these settlement camps for lengthy periods of time, even while the children would leave the camps to serve in the Armed Forces.

During the cold war, a war that went on for decades and cost this Nation billions of dollars and created great anxiety, the McCarthy hearings and the questions of patriotism that were raised indicate that again we had gone entirely too far. The list continues. Sadly, it continues when we reflect on what we have done since September 11.

There is always a tension in our society between security and freedom. Those who want more security often argue that the Government needs more power and more authority, and individuals must give up those freedoms. Many of us believe that in surrendering

our freedoms, we are surrendering our heritage to the terrorists. The freedoms which were so carefully guarded and so zealously pursued by so many generations, freedoms which we have won with the lives of Americans in conflict time and time again, should be carefully guarded as well.

I hope we will understand that the burden of proof is not on individual Americans to come forward and prove to the Government they have a right to their freedoms and liberties. When the Government seeks to take away the freedom and liberty of an American citizen, it is the burden of the Government to prove that is necessary.

With the SAFE Act, Senator CRAIG and I have taken four very specific and discrete elements of the PATRIOT Act and we have said that by changing these, we will still keep America safe, but we will prevent intrusive Government activity into the privacy of individuals.

We can search the Constitution from the beginning to the end, through every amendment, and never see the word ''privacy'' in it, but courts have said repeatedly that that is what government should be all about—protecting our privacy, only invading it in times when it is absolutely necessary to protect our safety in our community or our security as a Nation. The PATRIOT Act ended up being an allocation of power to the Government that went far beyond what was necessary for the security of our Nation and in fact invaded our rights and liberties.

We need to meet this challenge head on. It is possible to combat terrorism and to protect our freedoms. We can be safe and free. The SAFE Act demonstrates that. I urge my colleagues to join Senator CRAIG and myself as cosponsors.

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

The PRESIDING OFFICER. The clerk will call the roll.

The assistant legislative clerk proceeded to call the roll.

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

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

IN MEMORY OF JUSTICE FLORENCE K. MURRAY

Mr. REED. Mr. President, on Sunday, March 28, 2004, Rhode Island, the judicial community and the entire Nation lost a great pioneer who was a superb jurist and a powerful inspiration. Retired Supreme Court Associate Justice Florence Kerins Murray passed away after decades of breaking new ground for women in the United States. She was 87 years old.

Justice Murray, the first woman appointed to the Rhode Island Superior and Supreme Courts, was a lifelong resident of Newport.

The daughter of John and Florence Kerins, Murray attended Rogers High School in Newport and went on to attend Syracuse University, where she would later serve on the Board of Trustees and was the only woman in the 1942 graduating class at Boston University Law School where she would become a member of the board of visitors.

Throughout her life Justice Murray sought ways to serve the community. She began her professional career as a teacher in a one-room schoolhouse on Prudence Island, in Narragansett Bay. Later, she joined the Women's Army Corps and was promoted to lieutenant colonel before leaving the service in 1947. Again, Murray broke ground when she was the youngest woman to achieve that rank at the time.

Upon leaving the Army, she opened a one-woman law firm above a grocery store on Thames Street. She was the only female lawyer in Newport when she opened her firm. She later practiced law with her now-deceased husband, Paul F. Murray, who went on to serve as U.S. Attorney for Rhode Island from 1977 to 1981. Paul and Florence had a son Paul M. Murray.

Continuing her traditions of giving back to her community and public service, Murray served as both a State Senator from Newport and member of the city's School Committee.

Murray was the only woman in the Rhode Island Senate during her years in the State House from 1948–1956.

While there, she sponsored legislation to abolish wage differences based on gender and for equal pay for teachers throughout the State. She also introduced a bill making it easier for a parent to get child support if a former spouse leaves the State, and another that led to the creation of State facilities for the care and treatment of alcoholics.

In 1956, Murray was sworn in as the State's first female superior court judge. She became the first female chief judge of the superior court in 1978, and when she was elected by the General Assembly to the State Supreme Court in November 1979, she became the first woman on that bench. She authored more than 500 opinions during her time on the Supreme Court before retiring in 1996.

Supreme Court Justice Maureen McKenna Goldberg, who was appointed to Murray's seat on the high court upon her retirement, praised her ''for having broken down so many barriers that were previously closed to women. I believe her greatest accomplishment is that, before she boldly marched into uncharted territory, she paused, turned around and beckoned the rest of us to follow.''

During her four decades on the bench, Murray displayed an incredible work ethic and modest demeanor. In a 1997 interview with the Providence Journal she spoke about how she approached her job, ''I haven't got any special attributes. I just do a job as well as I can do it, and I seek to keep myself well-informed about whatever my field of work is.''

When she was not at work, Murray found dozens of other ways to contribute. She was a member of the Rhode Island Heritage Hall of Fame, a recipient of a Citizen of the Year Award from the Rhode Island Trial Lawyers Association, and a Judge of the Year Award from the National Association of Women Judges.

The American Bar Association honored her in 2002 for pioneering work, in the late 1950s, that led to the establishment of Rhode Island's Family Court.

She served on numerous judicial and civic boards over the years, among them, Salve Regina College and Bryant College and she founded the Newport Girls Club.

In her retirement, Murray was appointed by President Clinton to serve on the board of directors of the State Justice Institute and remained active in National Judicial College affairs.

Murray was honored in 1990 when the Newport Court House was renamed the Florence K. Murray Judicial Complex. It was an excellent and fitting way to honor a great woman.

And when we honor Justice Murray, we must remember to honor the greatness of her achievements. Not because she was a woman, but because her accomplishments were spectacular for any person, man or woman.

My deepest condolences go out to her friends and family, especially her son, Paul. Justice Murray was an incredible woman who was bound by no barriers. She was a patriot and a pioneer, a public servant and a mother. In her quest to improve herself, she improved the world around her. We will miss her dearly.

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

The PRESIDING OFFICER. The clerk will call the roll.

The assistant legislative clerk proceeded to call the roll.

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

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

Mr. CRAIG. Mr. President, are we on particular legislation at this moment?

The PRESIDING OFFICER. We are on a motion to recommit S. 1637, the JOBS bill.

Mr. CRAIG. Mr. President, I ask unanimous consent that I be allowed to speak as in morning business for up to 10 minutes.

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

SAFE ACT

Mr. CRAIG. Mr. President, I have come to the floor, as my colleague from Illinois did a few moments ago, to talk about the USA PATRIOT Act and where we are with this issue that the American people have recognized as important for a variety of reasons.

We all know that following the attack on American soil on September 11, 2001, we produced the USA PATRIOT Act to allow the law enforcement and intelligence communities of this country to move forward and do a variety of things. For the first time, we stepped

into some arenas of law that many citizens of our country looked at at the time and said, be careful if you go there for you may well be intruding upon what are fundamental and constitutional rights of privacy with the American people.

I voted for the PATRIOT Act at that time, and I did so speaking to the fact that I thought it was necessary that we move expeditiously to allow our law enforcement community to operate for the purpose of national security. I said at that time that this was not a perfect law. In fact, 253 communities and 37 States later, representing approximately 43.5 million people, have passed resolutions opposing or expressing concern about the PATRIOT Act. Groups as politically diverse as the ACLU and the American Conservative Union endorse changes in the law.

In his State of the Union Address, the President called for reauthorization of the PATRIOT Act. Given the bipartisan opposition to the law at this moment as it currently stands, there are many of us who believe it is necessary to make some adjustments in the law as we move toward reauthorization. Congress, in fact, made oversight of the PATRIOT Act implicit by sunsetting over a dozen sections of the bill at the time of its passage.

The Senator from Illinois and I drafted S. 1709 with this oversight in mind. It was drafted to clarify and amend in a minor way the PATRIOT Act's most troubling provisions so that the whole or even piecemeal repeal of the law would be unnecessary. It was drafted to safeguard the liberties of law-abiding citizens while preserving the law enforcement authorities essential to a successful war on terror.

Late last month, however, the Department of Justice issued a letter objecting to the very legislation, objecting to it before there had even been a hearing on it. Specifically, they objected to the SAFE Act on grounds that it would ''eliminate'' some PATRIOT tools and even ''make it more difficult'' to fight terrorism than before enactment of the PATRIOT Act.

Let me be emphatic: the SAFE Act in no way repeals any provision of the PATRIOT Act, nor impedes law enforcement's ability to investigate terrorism by amending pre-PATRIOT Act law. My name would not be on a bill that accomplished those things.

What the SAFE Act does do is clarify and slightly modify several provisions, particularly those related to the use of surveillance and the issuance of search warrants, to restore the judicial oversight requisite to healthy law enforcement.

Specifically, the SAFE Act would impose two reasonable safeguards on the use of roving wiretaps for intelligence purposes.

Before the PATRIOT Act, roving wiretaps were only permitted for criminal, not intelligence, investigations. The PATRIOT Act authorized the FBI to use roving wiretaps for intelligence purposes for the first time.

The Intelligence Authorization Act of 2002 further permitted the FBI to obtain ''John Doe'' wiretaps in an intelligence investigation without specifying either the target or the location of the wiretap.

Law enforcement is only required to provide a physical description of the target, such as 5′7″, Middle Eastern descent or something else equally as vague, so as to, in my opinion, be meaningless. In order to protect the private conversations of people wholly unrelated to the investigation, the SAFE Act simply requires that law enforcement specify either the target or the location of the wiretap and ascertain the presence of the target before initiating the surveillance.

Far from eliminating the roving wiretap, S. 1709 only makes the requirements for a roving wiretap for intelligence surveillance conform to the requirements for roving wiretaps under the criminal code. Does this tie law enforcement's hands in the way the Justice Department so described it? Hardly so.

In the case of sneak-and-peek warrants, before the PATRIOT Act, there was no statutory authority for delayed notice warrants for physical evidence, although covert searches of oral and wire communications for intelligence purposes were allowed. The Supreme Court never ruled on the constitutionality of sneak-and-peek warrants for physical evidence, and the Federal circuit courts were divided on the issue.

Despite this, the PATRIOT Act granted Federal law enforcement broad authority to obtain sneak-and-peek warrants for physical evidence where a court finds ''reasonable cause'' that providing immediate notice of the warrant would have an adverse result, including seriously jeopardizing an investigation or unduly delaying a trial,''—a very broad standard.

The SAFE Act, our amendment to the PATRIOT Act, reasonably limits when a court may issue a sneak-and-peek warrant for physical evidence to situations where notice of the warrant would:

(1) endanger the life or physical safety of an individual;

(2) result in flight from prosecution; or,

(3) result in the destruction of or tampering with evidence sought under the warrant.

Though the Department of Justice argues that scenarios such as a suspect's associates fleeing, going into hiding, or accelerating their plots would be excluded from the sneak-and-peek authority, these clearly fall within the reasonable limits of the SAFE Act.

The Department of Justice also misrepresents the authority of the sneak-and-peek provision when it says that the SAFE Act would ''restrict the ability of courts to extend the period of delay'' for a delayed-notice warrant. Although S. 1709 requires notice of a covert search within 7 days rather than a reasonable period, it authorizes unlimited 7-day delays if the court finds that notice of a warrant would continue to endanger the life or physical safety of an individual, result in flight from prosecution, or result in the destruction of or tampering with the evidence sought under the warrant.

Far from restricting the courts, the SAFE Act restores what I believe is the proper level of judicial oversight in the process.

I believe the Department of Justice also misrepresented the modifications the SAFE Act would make to section 215 of the PATRIOT Act, which permits law enforcement to obtain a vast array of business records with minimal judicial oversight.

Before the PATRIOT Act, FISA search orders were available for only certain travel-related ''business'' records—not library or personal records—where the FBI had ''specific and articulable facts'' connecting the records to a foreign agent.

These orders are available for any and all records, including library records, by simply certifying that the records are sought for an international terrorism or intelligence investigation, a standard even lower than relevance. The court does not even have the authority to reject this certification under current law.

Though the Department of Justice describes the SAFE Act standard as a ''much more rigorous'' standard, FISA search orders would still be available for any and all records, but only when the FBI has ''specific and articulable facts'' connecting the records to a foreign agent.

Far from ''raising the standard'' to a new level, S. 1709 reinstates the proper pre-PATRIOT standard for obtaining a FISA order for business records, and even maintains the PATRIOT Act's expanded definition of business records.

Likewise, the Department of Justice argues that section 5 of the SAFE Act would impose an ''entirely new limitation'' on the use of National Security Letters.

Before the PATRIOT Act, the FBI could issue a National Security Letter to obtain personal records by certifying that it had reason to believe that the person to whom the records relate is a foreign power or agent of a foreign power.

Current law allows the FBI to obtain sensitive personal records, without judicial approval, simply by certifying that they are sought for a terrorism or intelligence investigation, regardless of whether the target is a suspect.

While national security letters are only to be used to obtain name, address, length of service, and local and long distance toll billing records, available information indicated that the Justice Department is using them to obtain other kinds of records, including library records. Contrary to the assertions of the Department of Justice, the SAFE Act maintains the greatly expanded definition of ''financial

records,'' and even makes such records available without individual suspicion. S. 1709 only reasonably exempts libraries and Internet terminals from National Security Letter orders.

While I am disappointed that the Administration has expressed disagreement with the SAFE Act, I view this as an opportunity to increase the public discussion on one of the most important issues of the day.

I know Attorney General John Ashcroft. John and I are personal friends. I am not worried about how John Ashcroft will enforce the law. But administrations change. The law lasts, and it is imperative that it embodies a smooth balance of liberty and justice.

I am not seeking to repeal any provision of the PATRIOT Act but rather to salvage it by making necessary, albeit minor, amendments to it in order to safeguard individual liberties while preserving the very important law enforcement authorities it grants. Privacy is a hallmark of our constitutional system—the right of the individual within that system—and what we attempt to do by the SAFE Act, S. 1709, is to assure that when we reauthorize the PATRIOT Act, we guarantee that those rights are preserved.

I yield the floor.

Mr. KENNEDY. Mr. President, it is a privilege to join my colleagues Senator CRAIG and Senator DURBIN in calling for hearings on this important legislation to amend the PATRIOT Act.

After the vicious attacks of September 11, there was a broad consensus in Congress about what needed to be done. We all recognized the need to give law enforcement and intelligence officials stronger powers to investigate and prevent terrorism, to provide officials with effective ways to stop terrorists from entering our country, and to achieve greater coordination between the law enforcement and the intelligence communities. At the same time, we understood the critical importance of protecting the basic rights and liberties of our citizens and others residing legally in the United States and maintaining America's long tradition of welcoming immigrants from around the world.

The challenge we faced, then as now, was how to strike the right balance between law enforcement and civil liberties.

Many of us were concerned that some of the changes initially requested by the administration did not strike the right balance. We made significant improvements to the PATRIOT Act during Senate negotiations, but we also recognized the need to follow the implementation of these new powers carefully. That is why the 4-year sunset provision is such an important part of the legislation. By passing the sunset provision, Congress committed itself to revisiting the PATRIOT Act after 4 years, in a non-election year, and making a new and better-informed assessment of which powers should be retained, which should be revised, and which should be eliminated.

Since the enactment of this law, there has been increasing bipartisan concern about its effect on civil liberties in this country. Two hundred fifty-seven communities in 38 States representing over 40 million citizens, have passed resolutions opposing or expressing concern about the PATRIOT Act.

Clearly, we must do more to protect the basic rights and civil liberties of law-abiding Americans. The bipartisan Security and Freedom Ensured Act is narrowly written to correct some of the PATRIOT Act's most controversial provisions: it would protect innocent people from surveillance, by requiring ''roving wiretap'' warrants to identify either the target of the wiretap or the place to be wiretapped; it would impose reasonable limits on the Government's ability to carry out ''sneak and peek'' search warrants, by requiring notice of such a covert search to be given within 7 days after the search, unless the notice would endanger a person's life or result in the destruction of evidence or a suspect's flight from prosecution; and it would protect library and bookstore records from ''fishing expedition'' searches of the records, while still allowing the F.B.I. to follow up on legitimate leads.

None of these changes would amend pre-PATRIOT Act law in any way. None would impede the ability of law enforcement and intelligence officials to investigate and prevent terrorism. To the contrary, the SAFE Act would retain the expanded powers created by the PATRIOT Act, while restoring the constitutional safeguards that are indispensable to our democracy. These safeguards are a continuing source of our country's strength, not luxuries or inconveniences to be jettisoned in times of crisis.

Unfortunately, the administration does not agree. Our proposal has not yet received a hearing in the Judiciary Committee, yet the administration has already threatened to veto it. Rather than comply with the sunset provision specifically written into the PATRIOT Act itself, President Bush has sought to make an election-year issue out of it by calling on Congress to reauthorize the Act now. Rather than seek to promote understanding, the Attorney General and other officials have chosen to defend the PATRIOT Act by speaking only before audiences sympathetic to their views. In Boston and other cities, citizens with questions and concerns about the PATRIOT Act have been shut out.

I urge my colleagues not to accept this cynical election-year strategy. In the House, Chairman SENSENBRENNER has rejected calls for reauthorizing the PATRIOT Act this year, and we should do the same in the Senate. We should conduct additional hearings in the Judiciary Committee on the many important civil liberties issues that have been raised since September 11, including the administration's unprecedented and troubling ''enemy combatant'' policy, under which U.S. citizens are incarcerated without counsel or judicial review. Attorney General Ashcroft should appear to defend these and other policies. And we should hold hearings specifically on the bipartisan SAFE Act proposed by Senator CRAIG and Senator DURBIN.

We should also hold hearings on the need for legislation to protect the civil liberties of immigrants. The detention provisions in the PATRIOT Act have led to the unfair detention of innocent people. Massive registration programs have fingerprinted, photographed and interrogated over 80,000 innocent Arab and Muslim students, visitors, and workers. ''Voluntary interview'' programs have made criminal suspects out of Muslims legally residing in the U.S. In our pursuit of terrorist suspects, our Government cannot be allowed to ride roughshod over the basic rights and liberties of immigrants.

In a speech in 1987, Justice William Brennan observed that the United States had repeatedly failed to preserve civil liberties during times of national crisis—from the Alien and Sedition Acts of 1798, to the internment of Japanese Americans during World War II—only to later realize ''remorsefully . . . that the abrogation of civil liberties was unnecessary.'' As we continue to face the crisis of terrorism today, we should do all we can to avoid the errors of the past. The administration and Congress should work together in a spirit of bipartisanship and shared purpose, to bring terrorists to justice, to enhance our security, and to preserve and protect our Constitution.

The PRESIDING OFFICER (Ms. COLLINS). The Senator from Pennsylvania is recognized.

PREGNANCY AND TRAUMA CARE ACCESS PROTECTION ACT

Mr. SPECTER. Madam President, I support legislation which would address certain serious problems faced today by doctors, hospitals, and other medical professionals who provide obstetrical and gynecological services and emergency or trauma care services, and at the same time provide balance to fairly treat people who are injured in the course of such medical treatment.

While most of the attention has been directed to OB/GYN and ER malpractice verdicts, the issues are much broader involving medical errors, insurance company investments, and administrative practices.

I support caps on noneconomic damages so long as they do not apply to situations such as the paperwork mixup leading to the double mastectomy of a woman or the death of a 17-year-old woman in a North Carolina transplant case where there was a faulty blood type match, or comparable cases in OB/GYN or the ER trauma services area.

An appropriate standard for cases not covered could be analogous provisions in Pennsylvania law which limit actions against governmental entities in

the limited tort context which exclude death, serious impairment of bodily functions, and permanent disfigurement or dismemberment.

Beyond the issue of caps, I believe there could be savings on the cost of OB/GYN or ER trauma malpractice insurance by eliminating frivolous cases by requiring plaintiffs to file with the court a certification by a doctor in the field that it is an appropriate case to bring to court. This proposal, which is now part of Pennsylvania State procedure, could be expanded federally, thus reducing claims and saving costs.

While most malpractice cases are won by defendants, the high cost of litigation drives up malpractice premiums. The proposed certification would reduce plaintiffs' joinder of peripheral defendants and cut defense costs.

Further savings could be accomplished through patient safety initiatives identified in the report of the Institute of Medicine.

On November 29, 1999, the Institute of Medicine issued a report entitled ''To Err Is Human: Building a Safer Health System.'' The IOM report estimated that anywhere between 44,000 and 98,000 hospitalized Americans die each year due to avoidable medical mistakes. However, only a fraction of these deaths and injuries are due to negligence. Most errors are caused by system failures.

The Institute of Medicine issued a comprehensive set of recommendations, including the establishment of a nationwide mandatory reporting system, incorporation of patient safety standards in regulatory and accreditation programs, and the development of a nonpunitive culture of safety and health care organizations. The report called for a 50-percent reduction in medical errors over 5 years.

The Appropriations Subcommittee on Labor, Health and Human Services, and Education, which I chair, held three hearings to discuss the Institute of Medicine's findings and explore ways to implement the recommendations outlined in the IOM report. For fiscal year 2001, the subcommittee bill contained $50 million for a patient safety initiative and directed the Agency for Health Care Research and Quality to develop guidelines on the collection of uniform error data; establish a competitive demonstration program to test best practices, and to research ways to improve provider training. In fiscal year 2002 and 2003, $55 million was included to continue these initiatives. In this year, fiscal year 2004, we increased the amount provided for patient safety to $79.5 million.

We have received an interim report informing us the creation of a positive safety culture at hospital and health care facilities in which employees believe they would not be punished for reporting errors has caused reporting rates of such errors to increase. The emerging positive culture also includes the involvement of key leaders, both administrative and clinical, in patient safety procedures. This has helped professionals move ahead to improve patient safety and the establishment of patient safety committees, development and adoption of safe protocols and procedures and enhanced technology as a tool where carefully implemented to reduce errors and approve safety, for example, through the use of computerized physician order entry.

There is evidence that increased OB/GYN and ER trauma insurance premiums have been caused at least in part by insurance company losses, the decline in the stock market of the past several years, and the general rate-setting practices of the industry. As a matter of insurance company calculations, premiums are collected and invested to build up an insurance reserve where there is considerable timelag between the payment of the premiums and litigation which results in a verdict of settlement. When the stock market has gone down, for example, that has resulted in insufficient funding to pay claims and the attendant increase in insurance premiums. A similar result occurred in Texas on homeowners insurance where cost and availability of insurance premiums became an issue because companies lost money in the market and could not cover the insured losses on their accounts.

In structuring legislation to put a cap on jury verdicts, due regard should be given to the history and development of trial by jury under the common law where reliance is placed on average men and women which comprise a jury to reach a verdict resulting from the values and views of the community.

Jury trials in modern tort cases descend from the common law jury trial in trespass, drawn from and intended to be representative of the average members of the community in which the alleged trespass occurred. This coincides with the incorporation of negligence standards of liability into trespass actions.

This representative jury right in civil actions was protected by consensus among the State drafters of the United States Constitution's Bill of Rights. The explicit trial-by-jury safeguards in the seventh amendment to the Constitution were an adaptation of these common-law concepts harmonized with the sixth amendment clause that local juries be used in criminal trials. Thus, from its inception in common law through inclusion in the Bill of Rights today, the jury in tort negligence cases is meant to be representative of the judgment of average members of the community, not of elected representatives.

The right to have a jury trial to decide one's damages has been greatly circumscribed in recent decisions by the U.S. Supreme Court. An example is the analysis the Court has recently applied to limit punitive damage awards. In recent cases, the Court has shifted its seventh amendment focus away from two centuries of precedent in deciding Federal appellate review of punitive damage awards will be decided on a de novo basis and a jury's determination of punitive damages is not a finding of fact for purposes of the reexamination clause of the seventh amendment which provides ''no fact tried by a jury shall be otherwise reexamined in any court of the United States, than according to the rules of the common law.''

Thus, in the year 2003, the Court reasoned that any ratio of punitive damages to compensatory damages greater than 9 to 1 would likely be considered unreasonable and disproportionate, although that is subject to certain exceptions and constitutes an unconstitutional deprivation of property in nonpersonal injury claims. Plaintiffs will inevitably face a vastly increased burden to justify a greater ratio and appellate courts have far greater latitude to disallow or reduce such awards, although increased awards can be permitted under the Supreme Court decision. These decisions may have already, in effect, placed caps on some jury verdicts in malpractice cases which may involve punitive damages.

Consideration of the many complex factors on the Senate floor on the pending legislation will obviously be very difficult in the absence of a markup in committee or the submission of a committee report and a committee bill. The pending bill is the starting point for analysis, discussion, debate, and amendment. I am prepared to proceed with the caveat there is much work to be done before the Senate would be ready, in my opinion, for the consideration of final passage.

I yield the floor.

The PRESIDING OFFICER. The Senator from New Hampshire.

Mr. SUNUNU. Madam President, I wish to speak as if in morning business for up to 10 minutes.

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

SAFE ACT

Mr. SUNUNU. Madam President, I rise to speak on the issue of the PATRIOT Act and to follow up on the remarks earlier this afternoon by Senator CRAIG of Idaho. I have joined Senator CRAIG in cosponsoring the SAFE Act, a piece of legislation that would make certain modifications to the PATRIOT Act. I will not go into all of the details of the legislation, as Senator CRAIG did. However, I do want to highlight a couple of the main provisions of the legislation to outline our thinking in crafting these provisions and underscore why I think we need to take a step back, look at the PATRIOT Act in its totality and try to make it work better and try to strike a better balance the protection of the civil liberties we all cherish as Americans and the tools we do believe are necessary for law enforcement and intelligence agencies to conduct the war against terror.

It is unfortunate some people have come out with a knee-jerk reaction

calling for the repeal of the PATRIOT Act. Before the PATRIOT Act our laws did not reflect or foresee a day and age with cellular phones, satellite phones, and a high-speed Internet. There are a lot of very important provisions of the PATRIOT Act that do update our law enforcement capabilities in a way that reflects changes in technology. Protecting civil liberties while giving law enforcement the ability to operate as technology and new threats to our security emerge is critical to winning the global war on terror.

We can draw an appropriate line to protect civil liberties in a few specific areas. First, let's look at sneak-and-peek warrants, or a delayed notification search warrant. Senator CRAIG spoke at length about the provision in the SAFE Act that would modify the PATRIOT Act to say instead of requiring notification within a reasonable amount of time, which is clearly an arbitrary definition. Instead, we ought to have a set time limit that notification of a search warrant executed without notice has to be provided within 7 days of the execution of the warrant.

Now, if there is a threat to safety, or risk of flight, or a risk of damage to the investigation, the SAFE Act allows law enforcement officials to go back to the judge and extend that notification another 7 days. And that can continue indefinitely. This approach—specifying a time limit on the warrant and providing for more judicial review—is much clearer and more respectful of civil liberties. For anyone to suggest adding clarity in the law for notification undermines the capacity of law enforcement to continue to do their job, I think, is a level of rhetoric that does not serve an important debate such as this very well.

Second, we added clarification to the provision in the PATRIOT Act that deals with a roving wiretap. The SAFE Act would require law enforcement to specify either the suspect to be put under surveillance through a roving wiretap—an order that follows that suspect as they use different cell phones, and other means of communication—or specify a particular location to be monitored. Specify the suspect or specify the location. Changing the PATRIOT Act to require such specification would add clarity to ensure the PATRIOT Act is not misused and minimizes the likelihood that innocent parties would be unknowingly tapped. And again, such a change would only improve the PATRIOT Act as it would protect those who are not targets of investigation but it still give law enforcement the ability to conduct this kind of a roving wiretap.

Third, another provision of the SAFE Act applies sunset provisions to a number of different sections of the PATRIOT Act that do not sunset over time. When we talk about a sunset provision in the U.S. Congress, we are talking about a specific period during which the legislation is in force, but after that period—it might be a 2-year or 3-year or 4-year period—the law sunsets, and it needs to be reenacted or reauthorized by Congress.

I think sunsets are healthy. They are good because they force Congress to rethink and reargue a piece of legislation and examine how the legislation has been used and problems that might exist with it. I think we are much more likely to make improvements to legislation if we have to reauthorize it at different periods in the future.

I do not understand why anyone would say a sunset provision weakens legislation. It does not. It simply requires us to renew them at a future date. I do not know why law enforcement would be afraid of a sunset provision. I do not know why the Justice Department would be afraid of a sunset provision. If there is value to the law, it is helping law enforcement do their job, and all the while it is appropriately protecting civil liberties, the law will be reauthorized and improved over time.

I cannot think of any reason the provisions of the SAFE Act that add clarity to the time frame for notification and judicial review of a sneak and peak warrant, that add specification to the person or place targeted for a wiretap, or that sunset provisions to a law—should be opposed on the grounds that they somehow threaten our ability to conduct the war on terrorism. Quite to the contrary, the provisions of the SAFE Act go a long way toward ensuring individual civil liberties are protected, that the ability to misuse or abuse the law is minimized, that law enforcement continues to have what it needs to prosecute the war on terrorism and that Congress has to affirm and reauthorize legislation over time. I only see the SAFE Act as strengthening the PATRIOT Act.

So I join with Senator CRAIG, Senator DURBIN, Senator FEINGOLD, Senator CRAPO, other members of the Senate and the wide range of citizen groups who have all endorsed and supported the SAFE Act. I hope when we begin deliberations and discussions about renewing and extending the PATRIOT Act, these substantive yet modest, thoughtful modifications are a vital part of that debate that is undertaken in this Chamber.

I yield the floor.

The PRESIDING OFFICER. The Senator from Minnesota.

Mr. DAYTON. Madam President, what is the pending business?

The PRESIDING OFFICER. The motion to recommit the JOBS bill is pending.

Mr. DAYTON. Thank you, Madam President. I will speak to that motion, please.

Madam President, today, we voted actually a second time on that motion to invoke cloture to recommit this pending bill to the Finance Committee—a vote that failed. So, in other words, we essentially voted not to recommit the bill to the committee of origin.

I emphasize that fact because in my State of Minnesota Democrats are being accused of blocking action on this bill. That simply is not true. We are ready and willing to act on this legislation right now, in fact, as we were last week before it was pulled off the floor by the Republican leader.

So people watching might ask themselves, why was it pulled back then? Why have we been faced with these repeated attempts to send the bill back to committee? The reason is because the Republican caucus does not want to have to vote on the pending amendment, which is the Harkin amendment, which would protect the rights to overtime pay for some 8 million Americans—police officers, firefighters, nurses, laborers; hard-working Americans who want to continue to receive overtime pay when they work their extra hours, whether it be for the sake of public safety, whether it is needed to fill shifts on hospital wards in order to keep them open to patients, or whether it is in order to earn extra income to improve their own lives and the lives of their families.

These 8 million Americans are not asking for any special favors, such as are provided in the underlying bill. They are not trying to get special tax breaks or avoid paying taxes on their foreign income, as are the beneficiaries of the underlying bill. They simply want to be able to earn the American dream, by working harder, by working longer hours, paying their taxes but then coming out ahead because of the overtime provisions.

But this administration has said no, the same administration that wants to eliminate taxes on so-called unearned income, dividend income. They settled for cutting the rate in half but wanted to eliminate it initially. In other words, they want to make not working more lucrative and also want to make working harder less lucrative.

Now, what kind of family value is that? You work more and you earn less because the Bush administration cares more about the corporations that want to add to their profits by paying their workers less money. That is why they moved millions of American jobs overseas. That is why they have eliminated millions of American jobs.

Madam President, 8.5 million of our fellow Americans are out of a job today. And now these same corporations, which have, by the way, been enjoying record high-profit increases in each of the last 2 years, want to make even more money by paying less money to the people who are still working. And the administration is going to help them do it.

In fact, the Secretary of Labor unilaterally, by herself, revoked the overtime benefit protections for 8 million Americans. We, their elected representatives, are not even being allowed to vote on that matter to express our approval or disapproval—in this case, my strong disapproval—of that revocation of their overtime benefit protections.

Why not? Why can't we vote on protecting 8 million American workers? Well, the Republican Conference leader said: Where is the discernible gain to our Members from voting on this and other Democratic amendments?

I don't know about the gain to colleagues who don't want to support overtime pay, but I will tell you about the gain or the loss to those 8 million American workers, depending on whether this measure passes or fails.

That is their overtime pay that has been taken away by the unilateral action of the Secretary of Labor. That is their earned income that has been taken away. That is their new home, their college education, family vacation, prescription drugs they need to buy for elderly relatives.

We in the U.S. Senate are being denied even the right to vote because it is politically inconvenient for some of the Republican caucus.

There is also a huge gain or loss for millions of other Americans who are out of work by the fate of another Democratic amendment to extend unemployment benefits to the 1.1 million Americans who have exhausted theirs at the present time. That number includes an estimated 20,000 of my fellow Minnesotans. They are also hard-working men and women who, through no fault of their own, lost their jobs and have been looking for work and unable to find it in the terrible jobs climate of the last couple years.

Two-thirds of those out-of-work adults have children. An estimated 622,000 children are affected in those families that have exhausted their unemployment benefits. When that happens, it is estimated that over two-thirds of those families lose their health coverage, so the children do not have health care coverage any longer. Over half those families, it is estimated, fall below the poverty level as a result of losing their unemployment benefits. It is unbelievably heartless and cruel to deny them this extension. Yet again we are unable to get a vote in the Senate on extending unemployment benefits to those Americans.

Since we are unable to get these votes on our amendments to this JOBS Act, you might ask yourself, what is so precious about this bill, what is so perfect about it that the leader is denying us a chance to change it in any way? You would naturally assume that because it is called the JOBS bill, it is about actually providing jobs to fellow Americans, but that is not the case.

This is about providing $114 billion in tax breaks to large and mostly profitable American corporations, to very wealthy American investors. Thirty-nine billion of these tax breaks would go to their foreign business operations to allow them to reduce taxes paid in this country on foreign profits, to allow them to postpone the payment on earned income abroad; in other words, to provide them with additional tax breaks for expanding their foreign business operations and providing jobs overseas.

Some of those jobs might in fact be American jobs taken away from people in this country and sent elsewhere or they might be jobs that are going to be created through an expanded business operation that could have been created here in the United States except for the advantages of doing so elsewhere—meaning again that foreign workers get those jobs rather than Americans at a time when we have 8.5 million Americans who are out of work and another million and a half Americans who are so-called marginally attached to the labor force, who have given up looking for work, and another 4.5 million Americans who are working part time not by choice but because it is the only work they can find.

In other words, over 10 percent of our workforce is either unemployed or underemployed right now, and we are providing foreign tax breaks worth $39 billion, additional foreign tax breaks, in this measure to these companies or to the investors in them.

I will have an amendment I will offer that would address this matter and take these foreign tax breaks out of the bill, because if we are going to provide tax incentives, as other parts of the bill do, let's at least provide those incentives to American companies for producing jobs in the United States. Let's tie every single one of the tax advantages in this legislation to the provision of new jobs, ideally manufacturing jobs but provable new or additional jobs in the United States to Americans now, not as the measure provides for tax breaks that are going to accelerate in the years 2009 to 2012. Those are not going to result in the creation of new jobs in this country now. We are giving tax advantages to companies, some of which can certainly benefit from it, but many have been part of the 20-percent increases in corporate profitability in each of the last 2 years.

I am glad American corporations are profitable. We need them to be profitable in order to create jobs. But the fact is that at least in the manufacturing sector—and up until now in just about any other sector—improved profitability has not resulted in new job creation in the last couple of years. It didn't result in new job creation last month. So if we are going to provide tax reductions for U.S. manufacturing companies or anyone else, let's make darn sure those reductions are going to result in jobs, the creation of new jobs or the adding of jobs where formerly people had been laid off or cut back. Let's translate those tax breaks into what this bill calls itself, a JOBS Act, jobs for Americans.

Finally, I want to address the fact that as part of this gambit today to supposedly recommit the bill to the committee where it already was referred out, one of the ways in which we were supposedly going to be induced to do so was some part of the former Energy bill, we were told, was going to be added to the bill that reappeared out of the Finance Committee. I appreciate very much the work that has been done by that committee, in particular by Chairman GRASSLEY of Iowa, who has been stalwart in terms of providing additional tax incentives for energy production, particularly the biofuels, ethanol, and biodiesel fuels. He was instrumental also in changing the formula on the highway trust fund that penalized States such as Minnesota for their ethanol consumption. I would like to join with the majority leader and others who would like to advance this Energy legislation forward.

Since the bill was not recommitted to the Finance Committee, I have drafted an amendment I intend to introduce to add some of the energy provisions to the pending bill, ones that would reinstate the renewable fuels standard Senator DASCHLE, the Democratic leader, was instrumental in adding and keeping through the conference committee a year ago, legislation to expand the American consumption of ethanol and biodiesel fuels over the next 10 years, the electric reliability section, which is beneficial to smaller utilities throughout Minnesota and elsewhere in the Nation, and then the package of tax incentives which Chairman GRASSLEY, ranking member BAUCUS, and others voted out of the Senate Finance Committee that provide alternative fuel incentives, the small ethanol producer tax credit, the tradability of these credits by those coops and others that otherwise can't take advantage of them, the tax credit for biodiesel that parallels the credit provided for ethanol production.

These are important measures that would do what the bill itself purports to do, which is to add jobs and provide enormous economic benefits to a State such as Minnesota, to farmers in terms of income, to the production plants for ethanol and biodiesel fuels.

Those are real jobs amendments, real jobs provisions, those that are going to provide tax credits for business activities, those that are going to result directly in additional jobs for America and in an alternative fuel for America that can reduce our dependence on foreign oil; that can take some of the $115 billion a year we send out of the country to foreign countries such as Saudi Arabia and elsewhere to import foreign oil into this country; $115 billion that, if it were going into the pockets of American farmers and multiplying those dollars throughout communities, would result in an economic revitalization of rural America the likes of which we have not seen in decades and which we couldn't create any other way, not through all the Government programs you want to imagine, just through the free market, through increased profitability for American agriculture, through the creation of cleaner burning fuels that are available right now and could be produced right now in quantities to significantly replace the gasoline that is consumed all over this country.

That is a real jobs amendment, one I will be introducing and hope we can consider as part of the JOBS Act, so we can make that bill live up to its name, one that will actually provide jobs for Americans rather than corporate tax giveaways for those who don't need them.

I yield the floor.

The PRESIDING OFFICER. The Senator from Ohio is recognized.

Mr. VOINOVICH. Madam President, I want to comment on the remarks of the Senator from Minnesota this evening before the Senate and indicate many of us who voted against the Harkin amendment were also as concerned about some of the things the Senator of Minnesota talked about, in terms of the benefits that accrued to working men and women in the United States of America.

I made it clear at that time, when I voted against the Harkin amendment, I felt the Department of Labor should be able to move forward with their recommendations on a law that hasn't been changed since 1978, and that if what my colleagues on the other aisle have indicated is true, many of us would join them in having those rules overturned by the Members of the Senate.

I am pleased to say those rules have been finished by the Department of Labor and they are now at OIRA, which is in the Office of Management and Budget, being reviewed by John Graham. I am hopeful they will be back to the Department of Labor within the next 30 days, so we will know specifically what it is those rules are going to recommend in terms of changes in the law. Hopefully, they are not going to reflect what I have heard on the floor of the Senate over the last couple of months about eliminating overtime for 8 million workers.

The other thing I want to point out is there are many of us on this side of the aisle who are very much in favor of extending unemployment benefits, and I joined with many colleagues to try to get cloture on that amendment several weeks ago. I hope in the next couple of weeks we will be able to get that passed on the Senate floor. There are hundreds of workers in my State—and I am sure also in Minnesota—anxiously waiting for those benefits. In my State, we have too many people who are unemployed. Quite frankly, too many people in my State are worried about whether they are going to have a job. So some of the things the Senator talked about, I hope, will be dealt with during the next couple of weeks.

Mr. DAYTON. If the Senator will yield, I thank the Senator for the update on the overtime situation. I look forward to improved provisions from the Secretary of Labor. I thank the Senator also for his involvement and support to extend unemployment benefits. I know people in his State of Ohio, my State of Minnesota, and many States desperately need that. So I thank him.

Mr. VOINOVICH. Madam President, I also share the Senator's enthusiasm about the ethanol guarantee in the Energy bill. There are many other provisions in that bill many of us are concerned about. I think it represents the first real energy policy this country has had. Again, hopefully, we can work it out so that can get done along with the other provisions. He is right; that bill has some real job-creation aspects to it, particularly in the area of ethanol. We have several companies now that are thinking about building ethanol plants in Ohio, and I think one of the things the American public doesn't understand is it is going to provide less reliance on foreign oil and, in addition, it will limit some of the environmental problems we have from gasoline, with some other very good and important aspects to all of our brothers and sisters.

The PRESIDING OFFICER. The Senator from Ohio is recognized.

(The remarks of Mr. VOINOVICH pertaining to the introduction of S. 2292 are printed in today's RECORD under ''Introduction of bills and joint resolutions.'')

Mr. VOINOVICH. I thank the Chair, and I suggest the absence of a quorum.

The PRESIDING OFFICER. The clerk will call the roll.

The legislative clerk proceeded to call the roll.

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

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

SECURITY AND FREEDOM ENSURED ACT

Mr. FEINGOLD. Madam President, I join my colleagues Senators CRAIG and DURBIN in urging the administration and Congress to support the SAFE Act. The SAFE Act is a much needed bill that amends a few provisions of the USA PATRIOT Act in a reasonable way to preserve our constitutional rights and protections while still protecting our Nation against terrorism.

More than 2 years after the PATRIOT Act passed so overwhelmingly, without close scrutiny by Congress, I am delighted that there is now growing support for close examination of application of the law and for changes to the law to ensure that, as we fight terrorism, we also protect the civil liberties of Americans.

There is reason for hope. In Congress and in communities across the country, the American people are beginning to realize that the PATRIOT Act went too far.

In Congress, there is bipartisan support for changes to the law. I am pleased to join my Republican colleagues, Senators CRAIG, CRAPO, SUNUNU, and MURKOWSKI, as a cosponsor of the SAFE Act.

Over 275 communities and four States have now passed resolutions expressing opposition to certain provisions of the PATRIOT Act.

Mr. President, the attacks of September 11, 2001, presented a new and unique challenge to this country. I can think of nothing more important than responding to that terrible challenge and protecting Americans against terrorism. As I said during debate on the PATRIOT Act and continue to say today, I believe most of the Act's provisions were necessary and proper, such as increasing the number of border patrol agents and allowing the FBI access to voicemails as a part of wiretaps.

But we must be sure that, in conducting the fight against terrorism, the country's highest priority, we also respect the civil rights and liberties of all Americans. History shows that America should not let fear, however justified, cause us to sacrifice our liberty or the liberty of others in the name of national security. The Palmer raids, the McCarthy hearings, the internment of Japanese-Americans, these are all events that have been judged poorly through the lens of history. Today, we are again faced with a grave threat but we can and must face it without potentially abusing the power of the Federal Government or trampling fundamental constitutional rights and protections.

I am pleased that Members of Congress and the American people are beginning to realize the values at stake. There is healthy debate across the country in city councils, State legislatures, town hall gatherings, and in Congress, on how best to preserve a free and open society and to protect our Nation against future terrorist attacks.

In contrast, the administration does not seem interested in engaging in a good faith dialogue with the American people and Members of Congress about our legitimate concerns and reasonable proposals.

Instead, the President has prematurely called for lifting the sunset on certain provisions of the PATRIOT Act that are due to expire. Congress has a responsibility to exercise oversight and demand accountability from the agencies using authority granted to them by Congress. Nearly 2 years before some provisions of the PATRIOT Act will sunset, the administration should be engaging in good faith discussions and negotiations on how it is using the powers it has and how best to protect our country from terrorism while also protecting the civil liberties of our citizens.

I am pleased that both Senator HATCH and Representative SENSENBRENNER, the Chairmen of the Senate and House Judiciary Committees, respectively, have disagreed with the President and have stated that close scrutiny of the PATRIOT Act will be undertaken before Congress will consider lifting the sunset provisions. I commend them for taking this position. It is the right thing to do and the proper role of Congress.

In addition to prematurely calling for lifting the sunset provisions, the administration has already threatened to veto the SAFE Act if it is enacted.

That is unfortunate, and very unusual. The administration has issued a veto threat of a bill that was introduced just a few months ago and has not even had a hearing yet. Thousands of bills are introduced each year. The administration could spend a lot of time issuing veto threats for every one it disagrees with. Obviously, it is worried about this one. But veto threats at this early stage do not contribute to a productive dialogue, and they certainly will not deter the growing bipartisan interest in reevaluating the PATRIOT Act.

I would like to take a moment to talk about the SAFE Act and why it is a reasonable proposal.

As my colleagues Senators CRAIG and DURBIN have discussed, the SAFE Act makes important modifications to enhance judicial review of the FBI's roving wiretap and so-called ''sneak and peek'' search activities.

I would like to comment on another important modification to the PATRIOT Act contained in the SAFE Act, the section 215, or business records, fix.

Prior to the PATRIOT Act, the Government could compel the production of only certain business records in connection with a counter-intelligence or international terrorism investigation, namely, hotel, rental car, airline, and storage facility records. This was a narrow set of records, and so it made sense to change the law. I agree with that change, to allow the FBI access to more categories of business records.

But the PATRIOT Act went too far because it also weakened the ability of the courts to exercise their proper role as a check on the executive branch, and it took away the requirement of individualized suspicion. The PATRIOT Act changed the standards for allowing the FBI access to such records. Prior to the PATRIOT Act, investigators had to state, in their application to the secret FISA court, specific and articulable facts giving reason to believe that the person to whom the records pertained was a suspected terrorist or spy. If a court agreed, it would issue the order.

The PATRIOT Act, however, vastly expanded this power so that investigators no longer have to show ''specific and articulable facts.'' Now, investigators need only state that the records are ''sought for'' a counter-intelligence or international terrorism investigation. Upon receiving the application for a court order, the judge must—must—issue the order. He or she does not have discretion. The judge cannot review the merits of the request. For example, a judge cannot review facts to determine whether the scope of the request is reasonable. So long as the FBI asserts that the records are ''sought for'' a foreign intelligence investigation, the judge must issue the order.

The SAFE Act sponsors and I, as well as librarians, privacy advocates, and an increasing number of Americans, believe this provision of the PATRIOT Act goes too far. We recognize that there is enormous potential for abuse if the FBI is allowed access to personal information, such as medical records, library records, or newspaper or magazine subscription records, all with no meaningful judicial review and without a requirement of some showing that the records pertain to a suspected terrorist or spy.

The SAFE Act would simply re-insert a pre-PATRIOT Act standard so that he role of the judge as a check on the executive branch is real and effective. Like the standard prior to the PATRIOT Act, under the SAFE Act the FBI would need to state specific and articulable facts to support its application. The SAFE Act simply restores the judicial oversight that existed prior to the PATRIOT Act, giving the court the power to ensure that the Federal Government is not engaging in a fishing expedition at the expense of innocent Americans. This is a reasonable response to protect both our security and our privacy.

The administration has not shown how this prudent safeguard would harm the fight against terrorism or impair its ability to get access to information it needs to protect the country.

I might add that according to the administration, as of last September, almost 2 years since enactment of the PATRIOT Act, the administration claims it had not yet used section 215 of the PATRIOT Act. It is unclear whether they have used it since that time, and I have recently sent the Attorney General a letter asking him whether it has been used. But regardless of whether it has been used zero times or a handful of times, it is nevertheless difficult to understand how reinserting an important judicial check would harm the fight against terrorism.

I urge the administration to reconsider its position on the SAFE Act. The American people have thoughtfully expressed their fears and wishes. They want the Federal Government to protect them against terrorism, but they also want the Federal Government to be respectful of the Constitution every step of the way.

With passage of the SAFE Act, we can reassure the American people that we are working to protect their rights and liberties, as well as their safety. I urge my colleagues and the administration to support the SAFE Act.

I yield the floor.

I suggest the absence of a quorum.

The PRESIDING OFFICER. The clerk will call the roll.

The legislative clerk proceeded to call the roll.

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

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

The majority leader.

Mr. FRIST. I thank the Chair.

(The remarks of Mr. FRIST and Mr. HATCH pertaining to the introduction of S. 2290 are located in today's RECORD under ''Statements on Introduced Bills and Joint Resolutions.'')

The PRESIDING OFFICER. The Senator from Florida.

Mr. GRAHAM of Florida. Mr. President, I will withhold at the request of the leader.

The PRESIDING OFFICER. The Democratic leader.

Mr. DASCHLE. Mr. President, let me thank the distinguished Senator from Florida. This will only take a moment, but I yield the floor to accommodate the majority leader.

The PRESIDING OFFICER. The majority leader.

Mr. FRIST. Mr. President, I thank our colleague from Florida. He has been sitting patiently. I already interrupted another Senator, but this will be very brief.

Mr. President, over the next few minutes, I want to outline what the plans will be over tonight and tomorrow, briefly.

UNANIMOUS CONSENT AGREEMENT—H.R. 3108

First, Mr. President, I ask unanimous consent that at 11 a.m., on Thursday, April 8, the Senate proceed to the conference report to accompany H.R. 3108, the pension equity bill. I further ask consent that there then be 4 hours equally divided for debate between the two leaders or their designees. Finally, I ask unanimous consent that following the use or yielding back of time, the Senate proceed to vote on adoption of the conference report, with no intervening action or debate.

The PRESIDING OFFICER. Is there objection?

Without objection, it is so ordered.

Mr. FRIST. Mr. President, tomorrow we will have morning business. We will say more about that. Then at 11 o'clock, we will proceed to this conference report for up to 4 hours. I am not sure we will use that entire 4 hours, but there will be up to 4 hours equally divided on this very important bill, followed by a vote.

On a separate issue we have been addressing all day—actually the last several weeks—the FSC/ETI or JOBS bill, we are making real progress. As mentioned shortly after the vote earlier this afternoon, we are working on a list of amendments, a finite list of amendments, that would be agreed to by both the Democratic side and the Republican side.

We made real progress. I was very hopeful we would be able to, around this time, come back and say: This is the list; this is exactly how we are going to handle it. But we will continue to work over the next several hours and do want to announce that progress. We will have more to say either later tonight but more probably early first thing in the morning.

The PRESIDING OFFICER. The Democratic leader.

Mr. DASCHLE. Mr. President, I want to confirm what the majority leader has reported. I think we have made real progress. We are not quite there, but I think we will be there. I can say, with great pride and satisfaction, I appreciate very much the cooperation of

virtually every member of our caucus. I thank them for that cooperation and would hope perhaps by sometime tomorrow morning we will be able to reach an agreement.

I ask the majority leader if he anticipates any more rollcall votes tonight, given where we are with regard to the current schedule.

The PRESIDING OFFICER. The majority leader.

Mr. FRIST. Mr. President, in response, through the Chair, we will have no more rollcall votes tonight. Assuming we will be able to reach an agreement on a finite list on the FSC/ETI bill, I would expect we would not have votes on Friday of this week either.

Again, I thank our colleague from Florida. That will be the last interruption, I promise.

The PRESIDING OFFICER. The Senator from Florida.

COST OF PRESCRIPTION DRUG BENEFIT

Mr. GRAHAM of Florida. Mr. President, there is a recurring pattern in this town. An issue comes to our attention. It is red hot. It creates a great deal of controversy. Two months later it is forgotten. My effort tonight is going to be to resurrect one of those issues because I think is it not only extremely important, but it is also urgent that we give it attention.

The issue is the administration's cost estimate of the Medicare Modernization and Improvement Act and the circumstances surrounding the failure to release that cost estimate to the Congress. As I said, this is old news, but let me just refresh some people's memories.

As early as the summer of 2003, the administration's actuaries, the people who work for the administration in the Department of Health and Human Services, projected that the 10-year cost of the Medicare legislation, which among other things provided a prescription drug benefit, would be $534 billion over a 10-year period. It is also old news that Mr. Rick Foster, Chief Actuary of the Medicare Program, was ordered by the administrator of the Centers for Medicare and Medicaid Services—at that time Mr. Thomas Scully—to withhold critical actuarial data from Congress and that failure to abide by this order might well result in Mr. Foster being fired.

What is yet to be news are the reasons for the months' long delay in disclosing that estimate to the American public and to the Congress. It has now been 10 weeks since we found out the Medicare bill that we had represented to us as costing $400 billion over 10 years would actually cost $534 billion, according to the administration's own actuaries—10 weeks. We have had no explanation for the reasons for the delay, despite the following quote by Secretary Thompson, the Secretary of the Department of Health and Human Services, on March 16 of this year. What did the Secretary say?

There seems to be a cloud over this department because of this. We have nothing to hide. So I want to make darn sure that everything comes out.

Along with other members of the Finance Committee, I have asked the chairman and the ranking member to hold a hearing on the cost estimate and the reasons for its late disclosure. Given his strong track record on Medicare oversight, I am confident these two fine Senators will do so.

I want to be clear about a couple of things:

One, it is not the cost per se that is troubling to me. In a moment of full disclosure, I voted for a prescription drug benefit that cost more than $400 billion. I voted for a prescription drug benefit that cost more than $534 billion. But I was voting for a prescription drug benefit that would at least provide a reliable Buick-style benefit to our seniors. What has now happened is we have learned that we passed a Yugo-like prescription drug benefit and are now paying Cadillac prices for it.

The second thing I wish to be clear about, some of my colleagues have suggested that the only estimate that matters is the Congressional Budget Office because Congress is legally required to rely on the CBO numbers. You may recall, as a youth, reading some Charles Dickens books, including possibly Oliver Twist. In that book, when confronted with a similar argument, Mr. Bumble said:

If the law supposed that, the law is an ass, an idiot.

Mr. Bumble's perspective on the law aside, it is indeed true that Congress uses CBO numbers as our official scorekeeper, and I am not suggesting that at this point we alter that process. At the same time I don't think anyone would disagree that it is in America's best interest and the best interest of Congress to have as much information as possible before we vote on significant pieces of legislation. That would clearly include the insights of the person most knowledgeable about the likely cost of this program—the actuary of the very department that will have the responsibility for administering the program.

In fact, it seems information was deliberate, purposefully withheld from the Congress. That action of withholding was contrary to past practices. Moreover, it appears to directly violate the spirit of the Balanced Budget Act of 1997 which confirmed the independence of the Chief Actuary and the desire of Congress to have access to his relevant cost projections.

The fact that the official cost has appropriately been determined by CBO is not the point, nor is the point the fact that there was a difference in the cost estimates between the Congressional Budget Office and the Department's actuaries. We know that different analysts will frequently arrive at different conclusions. The point is this: the enormous magnitude of the difference and the efforts apparently taken by this administration to keep that huge difference hidden from public and congressional scrutiny. That is the point.

The point is the Chief Actuary had information that would have been valuable to us, Republicans and Democrats alike, in our deliberations long before we took our vote on the final conferenced version of the Medicare prescription drug legislation. This information was deliberately withheld.

The fact is, if the White House had released to the public and the Congress its own actuary's estimate of the cost of this Yugo prescription drug benefit, the legislation would clearly not have passed.

The Finance Committee has a particular obligation to investigate this deception. As a member of that committee, I understand we have an obligation to seniors who are depending on an affordable, quality prescription drug benefit. We have an obligation to taxpayers who will be paying for that benefit. We have an obligation to our fellow colleagues to whom we declared, we represented that this plan would not cost more than $400 billion, cross my heart and hope to die.

We have an obligation to get answers to these questions:

What did the President know regarding the much higher cost estimated by his own actuaries and when did he know it? For someone from Tennessee, that might be a familiar question.

If the President did not know that one of his stated priorities was estimated by his actuaries to far exceed the cost ceiling for this Medicare change—$400 billion over 10 years—who within his administration failed to notify him of this extraordinary cost overrun?

Third, what actions, if any, were taken by the Department of Health and Human Services, the Office of Management and Budget, or the White House itself to prevent the timely and accurate reporting of information to Congress on the cost of this Medicare bill?

Finally, who has the President held accountable for this deception and what sanctions have been imposed?

These are ''rational, critical, important to the Congress and the public to know the answers'' questions. One of the immediate impacts we are going to have because of this withholding is that the Congress, the Senate, now the House, have recently passed budget resolutions. These budget resolutions cover fiscal year 2005, which begins October 1 of this year, running through fiscal year 2009. In that budget resolution, as passed by the Senate, the baseline cost of the new Medicare prescription drug provisions and other matters that were included in that legislation is $165 billion over 5 years. The number, as determined by the administration's own Office of the Actuary in the Department of Health and Human Services, is $231 billion.

Mr. President, what are we going to do when we face the question of funding this prescription drug benefit—what I suspect to be likely closer to its true cost, $231 billion, as opposed to $165 billion, CBO's number. Are we

going to have to have a point of order with 60 votes every time we exceed the clearly inadequate number in order to provide the benefit that we are now running millions of dollars worth of television ads telling the seniors of America they are about to get a new benefit, without any changes in the Medicare Program?

The Finance Committee needs to closely examine these different numbers. I suggest a couple of places to start. Approximately 25 percent of the difference between CBO and the actuaries is in one area, and that is what will be the effect of increasing the number of persons who are enrolled in health management organizations. This legislation not only dealt with prescription drugs, but it also substantially increased the funding for HMOs and insurance companies in order to create an atmosphere that would induce new Medicare beneficiaries to change their form of service from fee for service to traditional Medicare and to join an HMO.

In fact, the CBO estimated it would cost an additional $14 billion to do that. The administration estimates it will cost $46 billion. You might ask why does it cost more. I thought the purpose of using an HMO for Medicare beneficiaries was it would save money. It was supposed to get people into a more organized health care system; it was supposed to encourage HMOs to provide preventive services so people would not get as sick, and they would have a higher quality of life and less health care costs.

Well, I am shocked, and I am certain most Members of Congress are shocked, to find the administration finds it will cost $46 billion more to provide health care services to those persons who are induced by the benefits of this legislation to join an HMO than if they stayed where they were. So one question we need to know is, why are we scaring seniors into HMOs, when this is clearly harmful to the financial structure of the Medicare Program?

The second point I hope the Finance Committee will review is the prohibition inserted into this legislation against the administrator of the program and the Secretary of the Department of Health and Human Services, negotiating on behalf of Medicare beneficiaries to get the best possible prices for prescription drugs. We have an almost analogous situation, except the circumstances are reversed. The Secretary of the Veterans' Administration is directed to negotiate for the prescription drugs his largest hospital system in the world provides. Guess what. He has negotiated so well the cost of prescription drugs in a VA hospital is less than half of what it would be if you bought the same drugs at retail at a local drugstore.

Can you believe the Congress of the United States has passed a provision that prohibits the head of Health and Human Services from getting the same good prices for our seniors?

Let me say, as an aside, we have seen some extremely distressing numbers from the trustees of the Medicare Program. In fact, they released a report within the last 30 days which indicated there has been a 7-year shortening in the term—the years in which Medicare will go insolvent. As recently as last year, it was estimated the program would go insolvent in 2026. In 1 year, they have reduced that to 2019. So we have a system that, we are being told by our best experts, in a little more than 15 years is going to be insolvent. It seems to me there ought to be a sense of urgency to get every possible relief we can to this program so we do not deny the promise that has been made to the American people, to the working men and women, when they reach retirement age.

I believe one thing we can do immediately, in addition to reviewing this issue of health maintenance organizations, is to give to the Secretary of HHS and the administrator of the Medicare Program the authority to negotiate for the hospital portion of prescription drugs. We have passed a new prescription drug benefit for outpatients. But since the beginning of Medicare, Medicare has paid for prescription drugs that were dispensed in a hospital setting. We ought to do everything we can, in light of the fact that 100 percent of the trust funds for Medicare goes for part A—the hospital part—to lower the cost of the hospitals. One immediate way we can do it is by assisting the hospitals in the same way VA assists its hospitals, to lower the cost of their prescription drugs.

I am hopeful the Finance Committee will hold a hearing on this important issue before the Memorial Day recess. This would give us an opportunity to fully understand the differences between the two estimates, the implications of those differences, and the process by which we learned at such a late date the administration was going to project such an enormous difference. And most important, as a Congress, we need to understand what happened and how the Congress can correct the consequence of this deception.

JOBS ACT

Ms. SNOWE. Mr. President, I rise today to support the Jumpstart Our Business Strength Act, a bill that provides much-needed tax relief to our Nation's manufacturing base in a manner that will not only protect but will create jobs. Without question, passing this bipartisan legislation will provide a major boost to the manufacturing sector of our economy.

Indeed, this legislation is necessary because our country's manufacturers are in desperate need of help. Not only has America been hard hit by slow worldwide growth, but also has sustained significant job losses during the last few years.

Although the economic statistics for March are a positive improvement, there remains cause for concern when one considers the profound erosion of U.S. manufacturing jobs in recent years. The damage this sector has sustained is nothing short of stunning. From July 2000 through July 2003, nearly 2.8 million U.S. manufacturing jobs were eliminated. Incredibly, New England lost more than 214,000 manufacturing jobs in the decade between June 1993 and June 2003.

According to the National Association of Manufacturers, between January 2001 through January 2004, manufacturing employment in our Nation declined by 16 percent. In New England, there was a 20 percent decrease in manufacturing employment during that same time period. This means that between January 2001 and January 2004, New England's manufacturing sector employment declined by an alarming 28 percent faster rate than it did nationally.

My home State of Maine has been shedding manufacturing jobs at an alarming rate over the past decade—and all the more so in the past two years. From January 1993 through June 2003, a 10½ year period, Maine lost 18,900 manufacturing jobs. More specifically, from July 2000 to June 2003, Maine has lost 17,300 manufacturing jobs—the highest loss of any State during that time period.

In addition to passing this legislation to reverse these trends, we are also here to replace the Foreign Sales Corporation/Extraterritorial Income, FSC/ETI, rules. Congress enacted these rules to make U.S. exporters more competitive overseas by reducing their maximum income tax rate on export income from 35 percent to about 29.75 percent. This incentive is necessary to offset the disadvantage that U.S. exporters face vis-a-vis foreign competitors who benefit from a territorial tax regime. Nevertheless, the World Trade Organization, WTO, determined that the FSC/ETI rules provide an impermissible export subsidy, meaning Congress must repeal those rules or face over $4 billion in trade sanctions. Those sanctions began to take effect March 1.

At the same time, repealing these rules will result in a nearly $50 billion tax increase on the manufacturing sector over the next ten years. Consequently, we need to replace the FSC/ETI regime with an appropriate substitute that not only complies with WTO rules but, more importantly, protects our own manufacturing base.

Our objectives should therefore be clear: not only must we pass legislation to comply with international trade law, but more importantly, we need to offer our country's manufacturers with a solution that will jumpstart their production and create jobs, and we must do so right now. Were we to neglect this duty to ensure that our nation's manufacturers are simply given the chance to compete on a level playing field with foreign competitors, we would only be compounding the current situation—a

result with which I am sure very few persons, particularly those workers who have lost their jobs would be pleased.

Our task, then, is to identify the best way to ''reallocate'' the $50 billion in revenues that replacing the FSC/ETI rules will generate and ensure that those funds continue to benefit their original beneficiary—namely our manufacturers. For that reason, I am pleased that the main component of this bill provides direct tax relief to the manufacturing sector of our economy. By permitting manufacturers to exclude from tax a portion of their income earned directly from manufacturing operations that employ U.S. workers and are located in the United States, we will continue to ensure that our Nation's manufacturers are on a level playing field with foreign competitors, and we will accelerate the overall economic recovery that is so desperately needed and that is already underway.

This legislation, therefore, provides poignant, targeted tax relief directly into the sector of our nation's economy that needs it most. In short, this income tax rate reduction for manufacturers will reduce their cost of doing business and increase their ability to compete in a global economy. Consequently, these businesses will be able to reinvest this savings directly into their operations, thereby increasing productivity and creating jobs.

To achieve these results, it is essential that this tax relief must be available for all manufacturers—regardless of entity classification. As such, I along with several Senators worked hard during the Finance Committee's markup to insist that this bill apply to small businesses that operate in the form of S-corporations, partnerships, limited liability companies, and sole-proprietorships. With small business manufacturers constituting over 98 percent of our Nation's manufacturing enterprises, employing 12 million people, and supplying more than 50 percent of the value-added during U.S. manufacturing, it is imperative that we not turn our backs on these hard working taxpayers.

Despite the significance that small businesses play in our country's economy, and despite the fact that not every manufacturer operates as a corporation, some contend that in place of this bill's targeted manufacturing relief, a more appropriate course of action would be to provide an across-the-board 2 percent tax cut for all domestic corporations—regardless if they are manufacturers.

I find this alternative problematic for two reasons. First, this proposition forgets the reason why we are here in the first place—namely to reallocate tax cuts that Congress provided specifically for domestic manufacturers in an effort to maintain their international competitiveness. Doesn't it make sense to ensure that all manufacturers, which are the primary beneficiaries of the FSC/ETI rules, continue to be the primary beneficiary of its replacement legislation, particularly when the manufacturing sector of our economy is already struggling to compete and preserve jobs?

After all, the main goal of this bill is to increase the competitiveness of our manufacturing base and stop the current job loss trend, meaning legislation that is not necessarily focused exclusively on manufacturing sector might fall short of this goal. Rather, the focus must remain on promoting domestic job creation, and the legislation before us accomplishes this task much more effectively than would an across-the-board tax cut that is exclusive to corporations.

In addition, an across-the-board corporate rate cut limits this tax relief to only corporations—something that is simply unacceptable as small businesses, many of which are S-corporations, limited liability companies, partnerships, and sole-proprietorships, are the true engine that drives this economy and are responsible for a majority of domestic job creation. Indeed, small businesses account for 97.5 percent of Maine businesses . . . 98 percent of America's manufacturing enterprise . . . and contribute three-quarters of all new jobs nationwide. It is therefore imperative that this legislation, which is intended to ''Jumpstart Our Business Strength,'' include all manufacturers, particularly all small businesses, so that we continue this upward trend and reinvigorate America's entrepreneurial spirit.

Along those lines, I am also pleased that Chairman GRASSLEY incorporated several other of my provisions during the Finance Committee's markup of this bill. For example, current law permits small businesses to expense, rather than depreciate, up to $100,000 spent on equipment used in their trade or business. While this provision encourages capital investments and stimulates economic growth, the current phase-out limits the number of small businesses that can qualify.

My provision already in this bill increases the phase out threshold—thereby increasing the number of eligible small businesses for this much-needed tax relief. In turn, these taxpayers will be provided with greater incentive to expand their operations that will not only increase productivity but ultimately create jobs.

Another one of my provisions included in this legislation is based on my bill S. 885—The Small Business Investment Company Capital Access Act of 2003. In short, this bill provides that certain government-guaranteed debt capital of Debenture Small Business Investment Companies, SBICs, is excluded from the definition of ''debt'' for purposes of the unrelated businesses taxable income rules.

This change is necessary because under current law, potential tax-exempt investors such as pension funds and universities are dissuaded from investing in small businesses due to the tax liability that would result from the SBICs. By eliminating this problem and expanding the capital available for SBICs to invest in the nation's small businesses at the modest rate of $1 million per year, this provision has the potential to result in $500-$600 million of new capital investments in SBICs, which in turn will create thousands of jobs each year.

Furthermore, this bill includes specific provisions at my urging that will benefit greatly many taxpayers in my home State of Maine. In committee, I worked to ensure that the tax relief in this bill was extended to ''unprocessed softwood timber.'' The Softwood Lumber industry, like paper and steel, has faced unfair trade from countries that subsidize their products and dump them on the U.S. market. For that reason, combined with the fact that this legislation is intended to benefit manufacturers in general and not only exporters, it is essential that this legislation extend this tax relief to the timber industry.

Similarly, I urged Chairman GRASSLEY to include a provision in this legislation that would classify gains resulting from the sale or exchange of timber as capital rather than ordinary. The crux of this provision is to change the way in which capital gains are calculated for timber by taking the amount of gain and subtracting three percent for each year the timber was held. This change is necessary because although individuals pay a maximum capital gains rate of 15 percent, corporations must still pay a 35 percent rate. As such, this change will reduce the rate of tax for corporations that sell timber, therefore making the U.S. forest products industry more competitive internationally and preserving domestic jobs.

In addition to these provisions that already are included in the bill, I am working with Chairman GRASSLEY on an amendment that I have filed that will not only spur economic growth but that will also go a long way in bolstering our national security. Currently, navy shipbuilders are treated unfairly by the tax code because they are required to pay tax based on an expected percentage of their profits. This treatment is problematic because oftentimes, they do not receive payment for several years, meaning the income tax has an overly burdensome effect on their cash flow and their overall production.

My amendment would change this treatment by placing navy shipbuilders on equal treatment with commercial shipbuilders in allowing them to pay 40 percent of their estimated income tax during the contract and the remaining 60 percent upon completion of the contract so long as the contract does not exceed 8 years. Importantly, this amendment does not in any way affect the amount of tax that navy shipbuilders will pay; rather, it simply affords a more equitable payment schedule to allow these taxpayers to satisfy

more of their tax obligation at a time in which they have cash in hand. I hope that in working with the chairman, we will find a way to address this unfair disparity that is harming our Nation's naval shipbuilders.

Accordingly, I believe that the bill before us strikes the proper balance of providing needed tax relief to the taxpayers in our economy who need it most. It has taken a great deal of work to get us where we are today, yet I firmly believe that providing targeted, affordable tax relief to the manufacturing sector of our economy is certainly the right path to choose in repealing the FSC/ETI rules.

The key here is that this bill simply reallocates the revenue that repealing the FSC/ETI rules will raise and distributes it directly to the primary beneficiaries of those rules—our country's manufacturers, which is indeed appropriate as the manufacturing base is in dire need of help.

While the legislation also simplifies the international tax code and contains other miscellaneous tax cuts designed to create jobs, it does so without increasing the federal budget deficit because it contains tax offsets that will thwart taxpayers' participation in illegal tax shelters and abusive leasing transactions. Consequently, unlike previous tax bills, this legislation is revenue neutral. Therefore, not only is this bill affordable, but it is much needed in order to bolster our manufacturing base and enhance the competitiveness of the U.S. based businesses.

Thank you, Mr. President.

MEDICAL LIABILITY REFORM

Mr. CHAFEE. Mr. President, earlier today I voted in favor of invoking cloture on the motion to proceed to S. 2207, the Pregnancy and Trauma Care Access Protection Act. My vote was not an endorsement of S. 2207 as it was introduced in the Senate. In fact, I have concerns about various aspects of the bill—including the $250,000 cap on noneconomic damages—and I anticipate supporting amendments to S. 2207 if the Senate has an opportunity to fully debate this legislation.

However, I do believe that reform of the medical liability system should be considered as part of a comprehensive response to surging medical malpractice premiums that endanger Americans' access to quality medical care by causing doctors to leave certain communities or to cease offering critical services, such as obstetrical care. For this reason, I voted for cloture on S. 2207 in an effort to move the debate forward.

The PRESIDING OFFICER. The majority leader is recognized.

MORNING BUSINESS

Mr. FRIST. Mr. President, I ask unanimous consent that the Senate proceed to a period of morning business with Senators permitted to speak therein for up to 10 minutes each.

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

TRIBUTE TO FLORA ALLEN

Mr. MCCONNELL. Mr. President, I rise today to honor the life of a noted Kentuckian and inspiring educator, Ms. Flora Allen. I also take this opportunity to extend my condolences to her daughters, Nora Ruth Jenkins and Margaret Cornelison, her five grandchildren, and all who knew and loved this remarkable woman.

Ms. Allen knew she wanted to be a teacher at a very early age. What she didn't know was the amazing impact she would have on the students she taught.

After moving to Berea, KY in 1946, she earned her bachelor's degree in teaching from Berea College and her masters from Eastern Kentucky University. She taught Kentucky history, social studies and science for 32 years. In addition to the traditional lessons, Ms. Allen also taught life lessons, such as how to behave and treat others.

When Ms. Allen was away from the classroom, she was busy in her community. She was a member of the Lioness Club, Berea Retired Teachers Association, Progress Club, Delta Kappa Gamma, and Berea Baptist Church where she taught Sunday school and Bible school. Ms. Allen spent her summers and remaining spare time working in the flower shop she owned with her husband, Allen's Flowers. Even with all this activity, Ms. Allen's best and most admirable attributes can be seen through the lives she touched.

It has become cliché to say that teachers inspire. Undoubtedly, informed of such a happening, Ms. Allen would simply have smiled and stated that it had been her goal all along. What is not cliché is the fact that she instilled in her students a desire to learn, to know, and to understand. Not all of her former students went on to be historians. However, it is certain that a great many of them who were inspired by her have become better citizens.

I ask each of my colleagues to join me in paying tribute to Flora Allen; for all that she gave to her community, her students, and to her family. She will be missed.

UNR RIFLE TEAM

Mr. REID. Mr. President, I rise today to congratulate the rifle team from the University of Nevada Reno on its terrific season this past year.

The Wolf Pack finished the regular season undefeated, making it one of only eight squads eligible for the NCAA Rifle Championships in both the air rifle and small bore disciplines. The Wolf Pack finished third and fourth respectively in these two categories and placed second overall in the two-day competition.

Developing excellence in marksmanship requires countless hours of practice and tremendous skill. The UNR rifle team's accomplishments reflect a lot of hard work and dedication by the individual members and their coach Fred Harvey. The university and the State can take great pride in their achievements.

Once again, congratulations to the Wolf Pack Rifle Team on a tremendous year, and best wishes for continued success next season.

HONORING OUR ARMED FORCES

PFC JOHN D. AMOS II

Mr. BAYH. Mr. President, I rise today with a heavy heart and deep sense of gratitude to honor the life of a brave young man from Valparaiso, IN. Private First Class John Amos II, 22 years old, died in the northern city of Kirkuk, Iraq on April 4, 2004, during an attack when the military vehicle he was riding in was struck by an improvised explosive device.

After graduating from Valparaiso High School in 2002, John joined the Army and was assigned to the C Company, 1st Battalion, 21st Infantry Regiment, 2nd Brigade, 25th Infantry Division, Schofield Barracks, HI. According to his mother, John was serving as the rear guard during a patrol at the time of his death. His deployment began when he joined the efforts in Iraq only 2 months ago. With his entire life before him, John chose to risk everything to fight for the values Americans hold close to our hearts, in a land halfway around the world.

John was the 26th Hoosier soldier to be killed while serving his country in Operation Iraqi Freedom. This brave young soldier leaves behind his father, John; his mother, Susan; his grandfather, Hank Amos; grandparents Doug and Lucy Whitehead; his sister, Rebecca; and his two half brothers Hunter and Tyler. May John's siblings grow up knowing that their brother gave his life so that young Iraqis will some day know the freedom they enjoy.

Today I join John's family, his friends, and the entire Valparaiso community in mourning his death. While we struggle to bear our sorrow over his death, we can also take pride in the example he set, bravely fighting to make the world a safer place. It is his courage and strength of character that people will remember when they think of John, a memory that will burn brightly during these continuing days of conflict and grief.

When looking back on the life of her late son, John's mother, Susan, told the Gary Post-Tribune that her son ''was a fun-loving kid and a lot of fun.'' Today and always, John will be remembered by family members, friends and fellow Hoosiers as a true American hero, and we honor the sacrifice he made while serving his country.

As I search for words to do justice in honoring John's sacrifice, I am reminded of President Lincoln's remarks as he addressed the families of the fallen soldiers in Gettysburg: ''We cannot dedicate, we cannot consecrate, we cannot hallow this ground. The brave men, living and dead, who struggled