

the poor, the needy, the students, and the veterans who will have less, just to fund MILC. As the Journal Editorial says so well, "Taxpayers have been MILCed enough by this particular boondoggle."

Please do the responsible thing for all Americans by working to put an end to MILC once and for all. Rewarding inefficiency should never be the function of any government program, even when there are surplus funds to spend. Now, when important health care and nutrition programs are being cut or cancelled, MILC should not be allowed to rear its head again.

Sincerely,

MICHELLE PLASARI,  
*President, RetireSafe.*

JIM MARTIN,  
*President, 60 Plus Association.*

[From the Wall Street Journal, Nov. 14, 2005]

#### MILKING THE TAXPAYER

It is a sign of just how unmoored from fiscal responsibility the current Congress has become that in the midst of a loud struggle over mostly symbolic budget cuts, the party in power is having trouble even letting dead programs stay dead.

One such program is the Milk Income Loss Contract program—MILC for short, cleverly enough—which passed its sell-by date at the end of September and expired. The House budget bill does not include its revival. But the Senate version reauthorizes MILC, and in 2004 the President promised Wisconsin voters that he would fight for its extension, so its fate lies with the House-Senate conference that will reconcile the two massive budget bills.

MILC was one product of the 2002 farm-subsidy bill, and even by farm-subsidy standards it is perverse. At the time the program was voted into law, Congress asked the Department of Agriculture to study the effects of the various government-support programs on the dairy business. The USDA duly issued its report in August, and for a technical document the report was unequivocal that "there is a basic incompatibility" between MILC and other pre-existing dairy subsidy programs. (The USDA report identifies no fewer than a half-dozen support programs for dairy farmers.)

The conflict is this. One of the oldest programs is the milk price-support program, which dates to the Depression-era Agricultural Adjustment Act. Under that program, the government steps in and buys milk when the price falls below a certain level. If that support price is set low enough, it provides some income security to farmers while allowing the market to clear and production to fall to the point where prices can rise again.

Here's where MILC pours in and clouds the picture. MILC makes direct payments to farmers based on their production whenever the milk price falls below a certain level. What's more, MILC kicks in at a much higher level than the price-support program. The effect of this is that production is encouraged by MILC even as prices are falling, which drives the price down toward the support level and prevents the shakeout that the price-support program is intended to allow.

The Agriculture Department found that MILC does in fact artificially depress the price of milk by encouraging overproduction, which is just what you'd expect. Then, through the price-support mechanism, the government winds up buying the milk that MILC encouraged the farmers to produce. Thus, in the Ag Department's dry bureaucratese: "The price support program and the MILC program provide an example of problems that can be caused by conflicting policy outcomes."

In short, MILC distorts the market and conflicts directly with other pre-existing subsidy programs. It has also cost close to \$2 billion since its inception, nearly twice the \$1 billion originally budgeted for it. Letting it expire should have been a no-brainer, not least because dairy farmers still enjoy numerous other forms of government handouts. It was kept alive in the Senate through the exertions of Vermont Democrat Pat Leahy, who isn't known for helping the GOP agenda. With no GOP Senators in either Vermont or Wisconsin, Republicans don't even have a political motive for keeping this subsidy alive.

Two billion dollars over three years may be a drop in the fiscal milk-bucket, but Republican lawmakers used to insist on sunset government programs for a reason. Taxpayers have been MILCed enough by this particular boondoggle.

#### MORNING BUSINESS

Mr. CRAIG. Mr. President, I ask unanimous consent there now be a period of morning business with Senators permitted to speak up to 10 minutes each.

The PRESIDING OFFICER (Mr. CHAMBLISS). Without objection, it is so ordered.

Mr. CRAIG. Mr. President, 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. SUNUNU. 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. SUNUNU. Mr. President, I ask permission to speak in morning business.

The PRESIDING OFFICER. The Senator is recognized for 10 minutes.

#### PATRIOT ACT REAUTHORIZATION

Mr. SUNUNU. Mr. President, today I come to the floor to speak about the pending reauthorization, extension of the PATRIOT Act, the legislation passed in the wake of the September 11 attacks. This debate is fraught with emotion because we were all outraged at what happened on September 11. Everyone in America and around the world shares a desire to address the threat of global terrorism, to give law enforcement appropriate powers to pursue those terrorists. But we want to make sure in doing so we pass legislation that is in keeping with the principles on which our country was founded—principles of individual liberty and freedom.

Ultimately, this debate about renewing, extending the PATRIOT Act is about police powers, the power that the people, through their elected representatives, give to government, give to agents of government. Whether it is at the State, local, or Federal level, we give certain police powers to government to conduct searches. We give the government power to detain individuals. We give the government power to serve subpoenas, to confiscate records.

We do it because we think ultimately it is in the public interest to do so. But just as the Framers recognized, we need to provide a balance, to balance these very forceful, very powerful tools with personal freedom, civil liberty.

So as a result, we require the government, or government agents, to show cause before they conduct a search. We set standards for evidence in a courtroom. They need to meet certain standards of evidence to conduct a search, certain standards of evidence to detain an individual or a suspect. And, of course, we have the principle of due process, trial by jury, and the ability to have an appeal heard in a court of law.

Some people may say: We know that. These are fundamental. These are basic to our system of justice. But it is important that we are reminded of these basic principles if we are going to get the reauthorization and the extension of the PATRIOT Act correct.

This is not a new set of issues. These are the very issues contemplated by the Framers. In many respects, these police powers are issues that alarmed the Framers—and I say alarmed because they were so concerned about the powers of Government and the powers of the State that they wrote specific protections into the Constitution. The fourth amendment, protecting from unreasonable search and seizure, specifically addresses the threshold of probable cause, that the Government shall show probable cause before it conducts search and seizure of personal property.

The fifth amendment protects us from self-incrimination. We have all seen enough Perry Mason to understand what it means to invoke one's rights under the fifth amendment. It speaks specifically about due process and the right to an open, fair due process when one is being prosecuted, whether it is for a criminal act or whether we are prosecuting one of these powers of search and seizure, a power of the State to issue a search warrant.

The sixth amendment speaks specifically about a right to a trial and what it means to have one's case heard before a jury or in a court of law. All of these amendments and others, but these three in particular, speak directly to balancing the rights of individuals and the liberty of individuals with the powers of the State.

The Framers were, quite frankly, very distrustful of Government and the power of the Federal Government. I try to be a little less pessimistic in my work in the Senate, but I must be frank with my colleagues in stating that on this issue, on the PATRIOT Act, I have begun this debate more from a position of mistrust and concern about the work that had been done in preparation for this reauthorization and the position taken by the administration. I will speak to that in a moment, but it is important to note that on the Senate side we had bipartisan agreement and on the Senate side

we had terrific leadership by Senator SPECTER on these issues. He understands this balance probably as well as anyone in the Senate. I do not fault his work as a chairman and certainly not the work of the Senate as a whole, given that we had incorporated a number of protections in our legislation.

The Justice Department began this process well over a year ago, taking the position that we should make all the provisions of the PATRIOT Act permanent and we should not make any changes, we did not need to make any changes. This is legislation that was passed just 6 weeks after September 11. I would not say it was passed in haste, but it was passed during a very difficult and emotional time in our country's history. We had sunsets on 16 provisions in the PATRIOT Act for just that reason. We knew there was a lot of uncertainty as to how this war on terrorism would progress, what tools law enforcement really did need to pursue legitimate terrorist suspects, what we needed to do to get our hands around financial records or other financial transactions that might lead investigators to uncover terrorist cells in America or around the world.

Anyone who understands the legislative process knows that was not a perfect bill, no matter how hard people worked on it. To suggest that when it came time for reauthorization there would be no need for changes I believe suggests a lack of understanding of the process of Congress, the legislative process, and how things get put together on Capitol Hill, or lack of understanding about the substance in the bill, not understanding all the provisions in the bill and how they did in some cases unnecessarily infringe on civil liberties, or perhaps an arrogance that leadership, those who were responsible for providing leadership within the Justice Department, knew they were not abusing any of the provisions in the law so no changes needed to be made. I will speak to that argument shortly, but I think it is very unfortunate.

So when one has this kind of legislation, as sweeping in scope as this is, and suggests when it comes time to deal with these sunset provisions that no changes need to be made, I think shows a lack of substantive reflection on the balance between the police powers of the State I spoke about and civil liberties on the other hand.

Two years ago, I joined with a number of my colleagues in introducing the SAFE Act: Senators DURBIN, SALAZAR, and FEINGOLD on the Democratic side, Senators CRAIG, MURKOWSKI, and myself on the Republican side. We spoke specifically to a few provisions in the PATRIOT Act where we thought we could do a better job of protecting civil liberties.

The 215 section that allows the subpoena of business or library records, the national security letter provision—the national security letter is a sweep-

ing order issued without the approval of a judge that gives investigators access to financial data, to medical data, or to other transaction records; the roving wiretap provision that is necessary because we have new communication technologies that are more mobile than ever but where we still need to do a good job of specifying who the target is of that roving wiretap; delayed search warrants—again, sometimes there is going to be a need for conducting a search warrant before notifying a target so that the investigation is not jeopardized. But we should have specific provisions written in the law for notifying that target after a certain period of time. As it was written, there was no period specified for notification.

Of course, the idea of sunsets is important to civil liberties anytime one is dealing with law enforcement legislation, because a sunset calls on Congress to come back, look at how a law was used, look at how it was implemented, how it affected civil liberties, and make appropriate changes.

I ask unanimous consent to speak for an additional 10 minutes.

The PRESIDING OFFICER. The Senator from Vermont.

Mr. LEAHY. Mr. President, I have no objection. I add to that consent that I would then follow the distinguished Senator from New Hampshire on the same subject.

Mr. SUNUNU. I so modify my request.

Mr. ALEXANDER. Reserving the right to object, I ask unanimous consent to follow the distinguished Senator from Vermont.

The PRESIDING OFFICER. Is there objection?

Without objection, it is so ordered.

Mr. SUNUNU. We introduced the SAFE Act to deal with very specific areas where we thought the PATRIOT Act needed to be improved to better protect civil liberties. Some would argue that with the PATRIOT Act, as it has been rewritten, the conference agreement, that there were only a few areas now where there is a disagreement and so we ought to accept it as it is. I make a broad argument, though, that simply because we are conducting shortcuts on civil liberties in only a few areas is simply not an effective argument. I think where civil liberties are concerned, as I illustrated with the Framers' concerns, we ought to do everything in our power to make sure proper protection is provided.

A few key points about the weaknesses that remain in the PATRIOT Act, and with these weaknesses I will not be able to support the final conference report. I certainly will not support moving forward with the conference report, in part because I think these are substantive problems but also because they are problems that should be easily addressed in a reworked conference agreement. The first deals with the business and libraries provision, section 215. In section 215 we have es-

tablished a very broad standard, too broad a standard, for investigators to get access to sensitive records—whether it is at a business or a library; it makes no difference. The standard is that the records simply be shown as relevant to an investigation. That does not sound inappropriate, but as a legal standard that means records could be subpoenaed that have no direct connection to a particular suspect.

As a result, the records of many innocent Americans, or the burden placed on businesses to continually produce records under this provision is going to be far too onerous.

There is also associated with this provision, this business records subpoena power, a permanent automatic gag order that prevents you from discussing the fact that this order has been issued to you as an individual or your business, and there is no judicial review of that gag order. I think this is a fundamental flaw in this conference report, the idea that you have been served with a permanent gag order to restrict your free speech, to restrict you from talking about that gag order, and it is permanent and you have no ability to appeal it in a court of law.

I would argue that taking your case, your appeal before a judge is fundamental to our system of justice in the United States of America. I would further argue that it in no way undermines law enforcement's ability to conduct an investigation to give the business or the individual the opportunity to appeal that gag order in a court of law. The argument that it might cost a little bit extra is ridiculous in the face of the need to protect individual civil liberties.

The system of judicial review for these section 215 subpoenas simply is not acceptable. Similarly, the system of judicial review on national security letters fails to meet the important test of balancing individual civil liberties. There is a very low threshold for getting a national security letter. It is not approved by a judge. The threshold is merely a "showing of relevance," once again not a direct connection to a suspect, which is very problematic. Moreover, the threshold for overturning the gag order—again a restriction on the ability to even discuss the national security letter—is that you must show bad faith on the part of the Federal Government. That is virtually impossible. No individual, no business served with a national security letter will effectively be able to show bad faith on the part of the Federal Government, and therefore they will never have a national security letter or its accompanying gag order overturned.

To have meaningful judicial review you have to have a meaningful standard, a reasonable standard of showing in that court of law. I think it is fair to say, if we look around the world at different governments' attempts to eviscerate the power of due process, this is one way to do it—to have judicial review, to "let people have their case in

a court of law," but set the standard of evidence or the standard for overturning an egregious decision so high that the government always wins. That is simply not acceptable where American civil liberties are concerned.

Finally, let me turn to a few of the arguments posed or made to individuals, such as Senator LEAHY or Senator FEINGOLD or me, who have brought forward these objections. One argument is what I would describe as a very broad argument, that we need to extend the PATRIOT Act, we need to fight terrorism, we need to make sure we don't undermine the ability of law enforcement in their work to deal with terrorist threats. I agree. Senator LEAHY—I will take the opportunity to speak for my colleague from Vermont. He agrees we need to do all of these things. But that is not a substantive argument for not making these changes he and I support. We are all for fighting terrorism. We are all for extending the PATRIOT Act. I do not oppose the idea of subpoenaing business records or even library records or the idea of a national security letter. What I oppose is having such a powerful government force in place without countervailing protections for civil liberties.

A second argument is one I mentioned earlier: for the Justice Department to say we have not abused any provisions in the current PATRIOT Act so just extend them all as written. It doesn't matter to me whether it is a Democratic administration or Republican administration, the argument that you have not abused a poorly written law is no argument at all for extending and making permanent that poorly written law. If it does not protect civil liberties, we should modify it. We should make sure the protections are there so that no matter who holds the reins of power, in the executive or the legislative or the judicial branches of Government, those freedoms continue to be protected.

A third argument is if we do not move forward, if this bill fails to get a cloture vote this week and it goes back to conference, it will only get worse. Let me get this straight. If you vote against a bill that doesn't adequately protect civil liberties, we are going to take it back to conference and compromise civil liberties even further? I think that is an outrageous argument to make. I think there are some people who are making it, or who have made it, who do not intend it to be taken that way. But I think it is only fair that it be taken that way. That is an inappropriate threat. If the attitude of the conferees is they will further restrict civil liberties if they do not get this poorly written bill passed, then perhaps no law is better.

I do not believe that. I think there ought to be a willingness to make improvements. Again, there are no specific reasons for how these changes that I have described—judicial review of a 215 gag order, a better threshold

for overturning an NSL there is no substantive argument that I have heard for how these would undermine law enforcement's ability to pursue terrorists. These arguments simply do not hold up.

Benjamin Franklin, 200 years ago, observed that:

Those who would give up Essential Liberty to purchase a little Temporary Safety deserve neither Liberty nor Safety.

Those words are as true today as they were over 200 years ago. There is no reason to compromise the right to due process, the right to a judicial review, to fair and reasonable standards of evidence, in the pursuit of our security and the pursuit of terrorists wherever they may be around the world. I think making these changes is reasonable. They are fair.

I have joined with Senator LEAHY in introducing a 3-month extension of the existing PATRIOT Act to ensure that we have plenty of time, in a reasonable and thoughtful way, to make very modest changes that would go a long way toward ensuring this is a better bill, that it is a bill that we can be proud of, and a bill that will protect civil liberties.

I yield the floor.

The PRESIDING OFFICER. Under the previous order, the Senator from Vermont is recognized.

Mr. LEAHY. Mr. President, first, if I might, I wish to compliment my colleague and neighbor from across the Connecticut River, Senator SUNUNU of New Hampshire. He has laid out very clearly and eloquently the reasons we should not be rushed into a bad bill. It is not because any of us here have any love of terrorists. Of course none of us do; no Americans do.

On a September morning 4 years ago, nearly 3,000 lives, American lives, were lost—not in a foreign nation but on our own soil. Our lives as Americans changed in an instant. There is not a person within this Chamber who does not remember exactly where he or she was when they heard the news of the attacks of 9/11. In the aftermath of those attacks, Congress moved swiftly to pass antiterrorism legislation. We moved as a Congress, as a Senate, as a House—not as Republicans or as Democrats, but as Americans, united in our efforts. The fires were still smoldering at Ground Zero in New York City when the USA PATRIOT Act became law on October 30, 2001, just 6 weeks after the attacks.

I know how hard we worked. I was chairman of the Senate Judiciary Committee at the time. Many of us here in the Senate today worked together in that spirit of bipartisan unity. We resolved to craft a bill that would make us safer as a nation.

Freedom and security are always in tension in our society, especially so in those somber weeks after the attacks. We tried our best to strike the right balance between freedom and security.

The Senator from New Hampshire quoted Benjamin Franklin. As one

reads the history of the founding of this Nation and what the Founders went through, his quote stands out so much. Benjamin Franklin, like the other Founders, knew that had our new country not worked, had the Revolution not worked, most of them would have been hanged for trying to break away from our mother country. When he spoke of a people who would give up their liberties for security deserving neither, he knew of what he spoke. And he set a key idea for the fledgling democracy of America, and it is one that I like to think through the generations we have strengthened. During my years in the Senate, I have done everything possible to strengthen that balance to maintain our liberties because if we do not maintain our liberties, at the best we have a false security. It is not a real security.

One of the fruits of the bipartisan ship of the PATRIOT Act, in trying to work out this balance, was the sunset provisions. Those key provisions set an expiration date of December 31, 2005, on certain Government powers that had great potential to affect the civil liberties of the American people. We are just weeks away from that date now.

Some may wonder how these sunset provisions worked their way into the PATRIOT Act. They were put there by the Republican leader of the House, Dick Armey of Texas, and myself. We have entirely different political philosophies, but we agreed on one thing: If you are giving great powers to our Government, you want to make sure there are some strings attached. It makes no difference whether it is a Republican administration or a Democratic administration, you want to make sure there are strings attached. Leader Armey and I insisted on these sunsets to ensure that Congress would revisit the PATRIOT Act within a few years and consider refinements to protect the rights and liberties of all Americans more effectively, and we prevailed on that point.

Sadly, the administration and some in the leadership in the House and Senate have squandered key opportunities to improve the PATRIOT Act. The House-Senate conference report filed last week by Republican lawmakers falls short of what the American people expect and deserve from us. The bipartisan Senate bill, which the Senate Judiciary Committee and then the Senate adopted unanimously, struck a better balance.

If I might, I wish to compliment the chairman of the Senate Judiciary Committee, Senator ARLEN SPECTER, the senior Senator from Pennsylvania, and those Republicans and Democrats in this body who worked with him, as I did, to put together a fair and balanced bill which was able to go through our committee, which is sometimes heavily divided on issues. Instead, it went through the Judiciary Committee unanimously and passed the Senate unanimously. We worked together on that because we understand that the

reauthorization of the PATRIOT Act has to have the confidence of the American people.

Think for a moment. Governments can limit the rights of the people in their countries really in only two ways: they can do it by force of arms, by oppression and repression, as we have seen with totalitarian governments, or, if they have done it right, they can do it with the consent of the governed.

As we are limiting some of these rights, as we are giving greater powers to our Government, we want to do it in a way where the American people—all of the nearly 300 million people in this great country—would have confidence in what we have done, because we do not enforce our laws in this country by force of arms, by dictatorship; we do it with the consent of the governed.

I believe what we passed in the Senate and in the Senate Judiciary Committee would have the confidence of the American people. But now we have pushed forward and changed that to flawed legislation which will not have that confidence and respect of the American people. The Congress should not rush ahead to enact flawed legislation to meet a deadline that is within our power to extend. We owe it to the American people to get this right. America can do better than this flawed legislation.

The way forward to a sensible, workable, bipartisan bill is clear. It is very clear, as Senator SUNUNU said on the floor earlier this morning and as I have suggested. Yesterday, Senator SUNUNU and I introduced a bill to extend the sunset for the expiring PATRIOT Act powers until March 31, 2006. Give us until March 31 to get this right, give us until March 31 to have a bill that would have not only the respect of the American people but especially the confidence of the American people. Our laws work if we have confidence in them, and they fail if we do not have confidence in them.

In offering this bill, Senator SUNUNU and I have been joined by Senators CRAIG, ROCKEFELLER, MURKOWSKI, KENNEDY, HAGEL, LEVIN, DURBIN, STABENOW, SALAZAR, and others. It is a bipartisan effort to extend this deadline. A deadline which Congress imposed to ensure oversight and accountability should not now become a barrier to achieving bipartisan compromise and the best bill we can forge together.

This is a vital debate. It should be. These are vital issues to all Americans. If a brief extension is needed to produce a better bill that would better serve all of our citizen then by all means, let us give ourselves that time. We want to give tools to prosecutors. I spent 8 years of my life as a prosecutor. Some of the finest people on my staff are former prosecutors. We know the needs, especially in the electronic age. But we can do better, and America can do better if given the time.

I thank Senator SUNUNU and all of our cosponsors in coming together in a

bipartisan way to advance what is a commonsense solution.

I ask unanimous consent to have printed in the RECORD some recent editorials on this matter.

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

[From the Washington Post, Dec. 12, 2005]

#### A BETTER PATRIOT ACT

The conference report on the USA Patriot Act reauthorization bill contains one major improvement over the previous version and a few minor ones. The new bill contains strong "sunset" provisions, under which the three most controversial provisions would lapse again after four years, not the seven of the earlier draft. This is no small win for civil liberties. The sunset provisions in the original Patriot Act have given Congress leverage over the past few years to extract information from an administration not known for openness concerning its use of the powers Congress gave it. Insisting that the administration justify itself again relatively soon ensures that Congress will be able to adjust and refine the law as need be.

Yet the conference report remains far from perfect. A bipartisan group of senators is still objecting that it does too little to protect civil liberties, and they are threatening a filibuster, though it is not clear whether they have the votes to sustain one. Some of the changes they are seeking are reasonable and constructive. While the bill does not contain the worst excesses of the House version, which was larded with irrelevant and often terrible policy changes, it still has a fair number of extraneous sections. Some are silly, some ugly.

What makes all this so frustrating is that a consensus bill was surely possible. Indeed, it happened. The Senate version of the bill passed on a unanimous vote, representing broad agreement to grant government authorities the powers they legitimately need while ensuring accountability in their use—and it didn't contain a raft of irrelevant laws unrelated to intelligence. The members balking at the current bill would do a service if they forced a cleaner, more accountable Patriot Act reauthorization.

Debate over the conference report has focused on a narrow array of civil liberties issues, all quite technical. The rhetoric from civil libertarians makes the stakes here seem greater than they really are. The differences between the various proposals are not huge in practical terms. They are, however, significant. The conference report contains weaker controls on secret warrants for business records in national security cases than the Senate bill did. It also does too little to get a handle on the use of national security letters—a form of administrative subpoena that the FBI uses in national security cases to obtain records of certain business transactions. These problems are not unsolvable, and it's hard to believe the government is today getting much data through uses of these powers that would be forbidden were they written more accountably.

What's more, sift through the bill and you'll find provisions dealing with tobacco smuggling, establishing civil immunity for folks who donate firefighting equipment to fire departments, establishing new crimes—some punishable by death—related to marine navigation, creating a new national security division in the Justice Department, letting Secret Service forensics experts help out in finding missing kids, combating methamphetamine abuse and making life more miserable for people challenging state convictions in federal court. None of this, needless to say, has much to do with protecting America from al Qaeda.

The Patriot Act cannot be allowed to lapse at year's end, and the current bill is much improved over earlier versions. But it could still be a lot better. Precisely because the administration cannot afford to let its powers expire, further improvement should still be possible.

[From the Fresno Bee, Dec. 12, 2005]

#### TAKE THE TIME

FRESNO, CA.—Barring an unlikely successful filibuster, the USA Patriot Act is likely to be renewed this week, mostly in the form it was given in 2001. That's when Congress, in the wake of the Sept. 11 terrorist attacks, rushed to give law enforcement broader powers of investigation. That's still justified up to a point. Law enforcement and intelligence agencies should not be hamstrung, for instance, by a now-lapsed ban on sharing information.

But it's risky to give blanket authority to government agencies to bypass the courts, as this law partly does. It's too tempting to look into every nook and cranny just to be sure there isn't something amiss there.

After lengthy debate behind closed doors, a House-Senate conference committee agreed on compromise language that congressional negotiators say will include more protection for individuals. But if that's true, why do six senators—three Democrats and three Republicans—still oppose the measure? (One of them—Democrat Russ Feingold of Wisconsin, the only senator to vote against the original law—is threatening to filibuster the revised version on the Senate floor.)

The principal objection of these lawmakers, and those of us who cherish individual liberty, is that the law sets too low a threshold for justifying the need to examine private records, including medical, financial and employment. And they are not persuaded—nor are we—that requiring authorities to show that their investigation has some relevance to an anti-terror investigation is enough.

These secret searches should be limited to specific individuals and not be so broad as to allow "fishing expeditions."

Supporters of the revised law say action is necessary now because 16 provisions of the original act are set to expire Dec. 31. That's true. But there's a way to avoid undue haste without tying the hands of law enforcement: Adopt a proposal by Sen. Patrick Leahy, ranking Democrat on the Judiciary Committee, to extend the law for three months, allowing time for public debate on a law that could be used as much to harm individuals as to catch terrorists.

The compromise bill would make all but two of the 16 expiring provisions permanent. The other two are to be extended for only four years, rather than the 10 years sought by House Republicans. That's small comfort to those whose privacy will be at risk in the meantime.

House Judiciary Chairman James Sensenbrenner, a proponent of quick action, claims it's needed to aid law enforcement in detecting terrorists before they strike. But that sense of urgency extends only so far. Former members of the 9/11 Commission have just scorched Congress and the White House for failing to protect the country in many ways, including the misallocation of resources to states or localities based on political clout instead of risk.

Americans would be no less safe if Congress were to postpone a final vote and allow time for an open and honest debate.

[From the Kansas City Star, Dec. 12, 2005]

#### MORE TIME NEEDED TO FORGE BETTER BILL

KANSAS CITY, MO.—A shaken Congress passed the Patriot Act with almost no debate in the wake of the 2001 terrorist attacks.

Since then politicians across the spectrum have joined librarians, city councils and other groups in raising alarms about the law's intrusions on the privacy of American citizens.

With the act set to expire Dec. 31, lawmakers are scrambling to reach a compromise that would allow most of the provisions to be renewed permanently. Time is short, but it's essential for Congress to give Americans a better balance between national security and civil liberty.

The House and Senate this week will consider a compromise agreement reached by negotiators. The package makes a good-faith attempt to address some of the problems. But it continues to give law enforcement agencies too much leeway to search people's homes and examine their records without first obtaining permission from judges.

Provisions in the proposed law instruct judges to presume federal agents' requests for records are valid, unless the targeted people can prove the government acted in bad faith. That places citizens at a serious disadvantage. Judicial oversight doesn't mean much if the judges merely serve as rubber stamps for law enforcement agents.

The compromise also does little to curb the burgeoning use of "national security letters," which the FBI uses to make sweeping requests for records from libraries, telephone companies and Internet providers.

Former Attorney General John Ashcroft used to sneer and scoff at librarians who raised concerns about these requests, implying they were rare. But *The Washington Post* has reported that the FBI issues 30,000 such letters a year.

Senators from both political parties are raising valid concerns about the proposed new law. Democratic Sen. Patrick Leahy proposed renewing the existing act for 90 days to give lawmakers more time to write a better bill.

Leahy's idea has merit. National security and individual freedoms are too important to be compromised in haste.

[From the Morning Call, Dec. 12, 2005]

#### THE WAR ON TERRORISM

ALLENTOWN, PA.—An unusual coalition of conservatives and liberals, along with the U.S. Chamber of Commerce and the American Civil Liberties Union, merits attention. It's rare for groups so far apart along the usual political spectrum to agree on something. But they are united in their concern that a compromise reached by Senate and House negotiators Thursday won't sufficiently protect Americans' civil liberties. They have reason for concern.

Sen. Arlen Specter, the Republican chairman of the Senate Judiciary Committee, said the compromise legislation is "not a perfect bill, but a good bill." House and Senate negotiators came up with a plan to permanently extend 14 of 16 provisions set to expire at the end of the year. Of particular note: When a law enforcement agent seeks access to records, by order of a secret court established under the Foreign Intelligence Surveillance Act, the agent must provide a "statement of fact" proving it is relevant to an anti-terrorism investigation.

But the coalition's concerns about fishing expeditions got a boost last week when a bipartisan group of six senators issued a statement critical of the compromise: Republican Sens. Larry E. Craig of Idaho, John E. Sununu of New Hampshire and Lisa Murkowski of Alaska, and Democratic Senators Russell D. Feingold of Wisconsin, Richard J. Durbin of Illinois and Ken Salazar of Colorado.

The primary concern is that restrictions in the Patriot Act haven't gone far enough

since its passage in the wake of 9/11 to prevent government officials from going on so-called "fishing expeditions." The *Washington Post* reported in October that the FBI used provisions of the act regarding records-gathering to annually issue more than 30,000 specialized subpoenas, or national security letters, seeking information from businesses.

The letters don't require the government to demonstrate a link between the information being sought and a suspected terrorist. They only attest that the records sought are relevant to a terror investigation. This provision of the Patriot Act must be tightened before the anticipated House and Senate votes this week.

Or, if such an agreement cannot be reached, both chambers should take the advice of Sen. Patrick J. Leahy of Vermont. The ranking Democrat on the Judiciary Committee, who didn't agree to the compromise, has proposed a three-month extension of the Patriot Act, past its year-end expiration date.

Sen. Feingold, the only senator to vote against the original legislation in 2001, has threatened to filibuster the bill extending Patriot Act provisions because it lacks sufficient safeguards to protect constitutional freedoms. Sixty votes would be required to block a vote on final Senate passage.

A three-month extension is preferable, however, to a bitter partisan battle on the Senate floor.

[From the Times Union, Dec. 12, 2005]

#### TRUE PATRIOTS

ALBANY, NY.—There's scant comfort in the compromise reached by House-Senate conferees late last week on renewing the USA Patriot Act. While it is welcome news that House negotiators failed in their attempt to have the most controversial provisions of this law extended for seven years, rather than four, as the Senate insisted upon, and which is now part of the compromise, there is no justification to put basic civil liberties at risk for even four minutes, let alone four years.

Fortunately, a bipartisan group of six senators is vowing to filibuster the accord, which is scheduled to be voted upon this week. They are the true patriots. Their demands are hardly burdensome. To the contrary, they want any final legislation to include checks and balances against possible abuse of power by government agencies acting under the surveillance powers of the Patriot Act. That means some monitoring of, say, FBI demands for reading, financial and other personal information on American citizens. Former Rep. Bob Barr of Georgia, who now heads a group called Patriots to Restore Checks and Balances, sums up the issue this way:

"Lawmakers could have easily fixed these controversial record search provisions by simply adopting the Senate-passed amendment to Section 215, requiring the government to show a connection between records sought and a suspected foreign terrorist, and by applying a similar requirement to the NSL (National Security Letters) powers. The decision of some lawmakers to rush this flawed Patriot Act legislation to a vote may allow them to leave a little earlier for the holidays this year, but it will also leave the civil liberties of their constituents in jeopardy for years to come."

Supporters of the compromise argue that it does offer safeguards against government abuses by requiring some judicial oversight. But a close reading of these oversight requirements shows that investigators would have no trouble meeting the loose standards for initiating searches.

No one, least of all Mr. Barr, is suggesting that the government shouldn't be able to

track down suspected terrorists. But the broad surveillance powers granted under the Patriot Act open the way for possible abuses, such as collecting information on law-abiding Americans without notifying them or allowing them the opportunity to challenge the searches.

Sen. Patrick Leahy, D-Vt., who refused to sign the compromise, suggests a reasonable solution: Rather than rush the vote, extend the current act for three months and use the extra time to forge a better bill. "We owe it to the American people to get this right," Sen. Leahy says. It's a debt that should not be taken lightly.

[From the Sacramento Bee, Dec. 11, 2005]

#### PATRIOT ACT RENEWAL: TAKE TIME TO DO IT RIGHT

SACRAMENTO, CA.—Barring an unlikely successful filibuster, the USA Patriot Act is likely to be renewed this week, mostly in the form it was given in 2001. That's when Congress, in the wake of the 9/11 terrorist attacks, rushed to give law enforcement broader powers of investigation. That's still justified up to a point. Law enforcement and intelligence agencies should not be hamstrung, for instance, by a now-lapsed ban on sharing information.

But it's always risky to give blanket authority to government agencies to bypass the courts, as this law partly does. It's too tempting to look into every nook and cranny just to be sure there isn't something amiss there.

After lengthy debate behind closed doors, a House-Senate conference committee agreed on compromise language that congressional negotiators say will include more protection for individuals. But if that's true, why do six senators—three Democrats and three Republicans—still oppose the measure? (One of them—Democrat Russ Feingold of Wisconsin, the only senator to vote against the original law—is threatening to filibuster the revised version on the Senate floor.)

The principal objection of these lawmakers, and of civil libertarians, is that the law sets too low a threshold for justifying the need to examine private records, including medical, financial and employment. And they are not persuaded—nor are we—that requiring authorities to show that their investigation has some relevance to an anti-terror investigation is enough. Instead, these secret searches should be limited to specific individuals and not be so broad as to allow "fishing expeditions." That has happened before and almost surely will again.

Supporters of the revised law, mainly House Republicans and the White House, say action is necessary now because 16 provisions of the original act are set to expire Dec. 31. That's true. But there's a simple way to avoid undue haste without tying the hands of law enforcement: Adopt a proposal by Sen. Patrick Leahy, ranking Democrat on the Judiciary Committee, to extend the law for three months, allowing time for public debate on a law that could be used as much to harm individuals as to catch terrorists.

The compromise bill would make all but two of the 16 expiring provisions permanent. The other two are to be extended for only four years, rather than the 10 years sought by House Republicans. That's small comfort to those whose privacy will be at risk in the meantime.

House Judiciary Committee Chairman James Sensenbrenner, a proponent of quick action, claims that's needed to aid law enforcement agencies "in the detection, disruption and dismantling of terrorist cells before they strike." Yet such a sense of urgency seems to extend only so far on Capitol Hill. Former members of the 9/11 Commission

have just scorched both Congress and the White House for failing to protect the country in a variety of ways, including the misallocation of resources to states or localities based less on risk than on political clout.

Americans would be no less safe if Congress were to postpone a final vote and allow time for an open and honest debate.

[From the Brattleboro Reformer, Dec. 10, 2005]

#### REPEALING PATRIOTISM

BRATTLEBORO, VT.—At some future date, when sanity perhaps returns to our nation, historians will look back at the Patriot Act and put it in the same category as other assaults on our civil liberties, such as John Adams' Alien and Sedition Act, Abraham Lincoln's suspension of habeas corpus during the Civil War or Franklin Roosevelt's internment of Japanese-Americans during World War II.

On Oct. 26, 2001, President Bush signed the Uniting and Strengthening America by Providing Appropriate Tools Required to Intercept and Obstruct Terrorism (USA PATRIOT) Act. The House of Representatives passed this grab bag of police-state tactics by a 357-66 vote with almost no debate.

Wisconsin Democrat Russ Feingold was the only senator to vote no. At the time, Feingold called the Patriot Act a "truly breathtaking expansion of police power."

A fearful Congress was stampeded into approving, almost sight unseen, one of the broadest assaults on civil liberties in our nation's history. Despite assorted court challenges, the expansion of police power continues—an expansion which has done little to capture the masterminds of the Sept. 11 attacks or to prevent future attacks. But this expansion has done much to undermine our hard-won Constitutional rights.

What has happened to our legal rights since then? Here's a refresher:

You've lost your freedom of association. The federal government can now monitor the doings of religious and political organizations, even if there's no reason to suspect that illegal activity is going on.

You've lost your freedom from unreasonable searches. The federal government may search and seize your papers and effects without probable cause and without a court warrant. It can also question librarians and booksellers about your reading habits, and threaten them with jail if they reveal to anyone that you're being investigated.

You've lost your right to a speedy and public trial. The federal government can now jail you indefinitely without you being charged with a crime and can do so without holding a trial and without allowing you to confront your accusers. This is what you can expect if you are deemed to be a "terrorist" or are deemed to be "assisting a terrorist group." The definition of "terrorist" and "terrorist group" is purely up to the government, of course.

You've lost your right to legal representation. Conversations between attorneys and clients can now be monitored in federal prisons. That is, if you're fortunate enough to have an attorney. The federal government now has the right to deny you legal representation too.

In short, the federal government can arrest virtually anyone it deems to be a danger to national security, even without a formal criminal charge, and jail them indefinitely. It can deny you a lawyer or even a trial, public or secret. And all of this can happen without your family or friends and relatives ever knowing what happened.

This is what the so-called war on terrorism has done to our Constitutional rights. This is

why the current debate in Congress over extending the provisions of the Patriot Act is important.

To keep the Patriot Act as it is means more secrecy, more disinformation and more repression. It is quite frankly, un-American. It is behavior straight out of a totalitarian state; tactics not worthy of the world's greatest democracy.

The average American thinks he or she is safe. But history has shown us that when a regime has absolute power, it's only a matter of time before anyone and everyone is subject to official intimidation and attack.

Security and "fighting terrorism" are not suitable pretexts for destroying more than two centuries of American jurisprudence. The rule of law as enshrined in the Constitution is supposed to still mean something in America.

It's time to demand that Congress and the Bush administration respect our civil liberties. There shouldn't be a discussion to modify or extend the Patriot Act.

Instead, Congress should be working to repeal it.

Mr. LEAHY. Mr. President, I thank the distinguished Senator from Tennessee for his willingness to allow me to go forward at this time. I know he has been sitting here patiently. I thank him, and I yield the remainder of time.

The PRESIDING OFFICER. Under the previous order, the Senator from Tennessee is recognized for 10 minutes.

Mr. ALEXANDER. Thank you, Mr. President.

#### IMMIGRATION

Mr. ALEXANDER. Mr. President, the majority leader has said that after the first of the year we would turn our attention to immigration, and well we should. Some estimates show that 10 to 20 million people living in the United States may be here illegally. Whatever one may think about immigration, one has to start with the idea that our Nation is based on a few principles, and one of the most important of those principles is the rule of law. This is a problem we need to address and the American people have a right to demand we address. The buck stops here. This is not something Governors can deal with or school districts can deal with. It stops here.

Not long ago in Nashville I gave a speech in which I attempted to say I believe there are three parts to a comprehensive solution to immigration, the kind of comprehensive solution President Bush has talked about. Part No. 1 is border security. I had no more said the words "border security" than the whole room rose and began to applaud; they were not interested in the rest of the story. I would like to say a word today about the rest of the story, what our immigration debate needs to include in addition to border security.

Let me turn to a lesson we are learning from across the ocean, from Great Britain and France. Last month, the British Government instituted a citizenship test that immigrants to Britain must pass before becoming British citizens. When he announced a number of related measures regarding British

citizenship last August, Prime Minister Tony Blair said:

People who want to be British citizens should share our values and our way of life.

These new rules were spurred by the terrorist attack in London last July in which four young men, three of whom were British-born children of Pakistani immigrants and the fourth who was a Jamaican immigrant, bombed the London subway system. In addition to taking new security precautions, the British Government recognized the need to ensure that immigrants to their country, and especially those who become citizens, integrate into British society and demonstrate loyalty to their newly adopted homeland.

France is similarly facing a period of self-examination on integrating immigrants and the children of immigrants following the 2-week violent civil unrest that spread across many of France's poor suburbs last month. That violence resulted in 126 policemen being injured, 9,000 cars burned, and \$250 million in damages, according to the French Government.

Like their British neighbors across the English Channel, the French are trying to figure out how to integrate this dissatisfied population—the children of Muslim immigrants—into French society. According to the French Ambassador:

[T]hese teenagers feel alienated and discriminated against both socially and economically. They don't want to assert their differences. They want to be considered 100-percent French.

We should learn a lesson from our friends across the ocean. As we in the Senate begin to debate our immigration policy next month in the Senate, we would be wise to consider their quandary. Too often discussions on immigration reform begin and end with securing our borders. Securing our borders is step No. 1, but there are two additional, essential steps to any comprehensive solution to our immigration problems.

Step No. 2, once we have secured our borders, is to create a lawful status for those whom we welcome to work here and those we welcome to study here. We should remember who we are. This is a nation of immigrants. President Franklin D. Roosevelt began one of his addresses, "My fellow immigrants." Once we secure the borders, once we deal with the rule of law problem, we need then to remember step No. 2, which is that we have millions of people whom we welcome to work here in all aspects of our society. They need a legal status that respects our rule of law. We welcome the 572,000 foreign students who come here to study. We hope many of them stay here. They are helping to create a higher standard of living for us. If they go home they become ambassadors for American values. Recently, Dr. Steven Chu, an American who was the co-winner of the 1997 Nobel prize in physics, pointed out to me that 60 percent of Americans