

This bill also marks the first time in 10 years that the Federal Government will slide backward on its commitment to students with disabilities. The Federal share of special education costs would drop from 18.6 percent in fiscal year 2005 to a flat 18 percent in fiscal year 2006.

Every time we cut back our investment in special education, we are putting a higher burden on local school districts, children, and their families.

In addition, funding for disadvantaged students—through title I—will receive its smallest increase in 8 years. In fact, the funding level in this bill is \$9.9 billion less than what Congress and President Bush committed to provide. The bill would leave behind 3.1 million students who could be fully served by title I if the program were funded at the committed level.

Many students are feeling the impact of higher tuition. This year, tuition and fees grew by 7.1 percent at 4-year public universities. But the conference report fails to increase the maximum Pell grant award for the fourth year in a row.

It also fails to increase funding supplemental educational opportunity grants, the Work-Study Programs, and the LEAP Program, which supports State need-based aid.

In addition, the conference report also fails to increase funding for GEAR UP and the TRIO Programs, which help disadvantaged students complete high school ready to enter and succeed in college.

This bill also moves us in the wrong direction on helping America's workers.

We hear a great deal about economic recovery and building a strong economy. Yet this conference report will cut adult job training by \$31 million. It will cut youth training by \$36 million. These programs serve over 420,000 people nationwide. How can we hope to strengthen our economy and help those who lost manufacturing jobs if we are reducing our investment in job training?

All of the tools we need to build a strong economy—and a strong America—are on the chopping block in the Conference Reports.

Worst of all, this is not the end.

We know that there will likely be an across-the-board cut in all discretionary programs, including those funded in the Labor, HHS and Education appropriations bill.

That means even more families will lose access to affordable health care, more children and schools will go without the resources they need to meet the Federal mandates of the No Child Left Behind Act, and more workers will see the American dream slip away when their plant closes.

This is not the right message to send to our families and communities.

Let's show them that we want to make America strong again and that we are willing to invest here at home.

I urge my colleagues to reject this conference report and force the Repub-

lican leadership to invest in making America stronger.

The PRESIDING OFFICER. The Senator from Pennsylvania.

Mr. SPECTER. Madam President, there is time available on the bill, the Labor, Health and Human Services, and Education bill, for those who wish to speak in favor of it. If any of my colleagues wish to do so, I invite them to come to the floor at this time. If there are no speakers in favor of the bill on our time, I intend to utilize this time for a discussion on the PATRIOT Act, which has a very limited amount of time to debate and discuss these issues. But I renew my statement. If anybody wants to speak in favor of the bill, they should come to the floor at this time and we will find time for them to speak.

**USA PATRIOT AND TERRORISM PREVENTION REAUTHORIZATION ACT OF 2005—CONFERENCE REPORT**

The PRESIDING OFFICER. The order on the floor at this time is to go to the conference report to the PATRIOT Act. So under the previous order, the Senate will resume consideration of the conference report to accompany H.R. 3199, which the clerk will report.

The Senator from Pennsylvania.

Mr. SPECTER. Madam President, parliamentary inquiry: I understood Senator HARKIN had an hour and a half on Labor-HHS and that I would have half an hour on Labor-HHS, and we would then go to the conference report on the PATRIOT Act.

The PRESIDING OFFICER. The time of the Senator from Pennsylvania is preserved, but it is contemplated that time will be used later in the day.

Mr. SPECTER. Reserved, but later?

The PRESIDING OFFICER. Correct.

Mr. SPECTER. May I inquire when later, Madam President?

The PRESIDING OFFICER. At a time to be determined by leadership.

Mr. SPECTER. Will it be in advance of the 3:30 vote on the Labor-HHS bill?

The PRESIDING OFFICER. The Senator from Vermont.

Mr. LEAHY. Madam President, while this discussion is going on, if I could also make a parliamentary inquiry.

Once we begin on the PATRIOT Act, is it my understanding the distinguished senior Senator from Pennsylvania is in control of an hour and the Senator from Vermont is in control of an hour?

The PRESIDING OFFICER. The Senator is correct. There will be 2 hours equally divided between the two leaders or their designees.

Mr. LEAHY. Thank you. I appreciate that, Madam President.

The PRESIDING OFFICER. The Senator from Pennsylvania.

Mr. SPECTER. Madam President, parliamentary inquiry: We are now proceeding for 2 hours on the PATRIOT Act, as the distinguished senior Sen-

ator from Vermont has said, with 1 hour under his control and 1 hour under my control?

The PRESIDING OFFICER. That is correct.

The clerk will now report.

The assistant legislative clerk read as follows:

Conference report to accompany H.R. 3199, an act to extend and modify authorities needed to combat terrorism, and for other purposes.

The PRESIDING OFFICER. Under the previous order, there will now be 2 hours equally divided between the two leaders or their designees.

The Senator from Pennsylvania.

Mr. SPECTER. Madam President, I encourage anyone who has issues of concern to come to the floor at this time so we may consider them. This is a very complicated Act. We have had some debate already. On Monday, I spoke at some length to describe the Act. On Tuesday, Senator FEINGOLD and I had an extended discussion on the act. I talked to other of my colleagues who have raised questions about it, specifically the Senators who have favored a filibuster. And anybody who has an issue which they wish to raise, I would invite them to come to the floor so we can take up their concerns one by one. It will be illuminating, I think, to other Senators to hear what we are doing on these issues.

At the outset, I will address some issues which have already been raised. One contention has been raised by one Senator on a change in the Senate bill to the conference report on challenging efforts to obtain documents under section 215. The conference report permits the recipient of a 215 order to "challenge the legality of that order by filing a petition [with the Foreign Intelligence Surveillance Court]." That provision omits a phrase from the Senate bill which says that they may "challenge the legality of that order, including any prohibition on disclosure, by filing a petition with the Foreign Intelligence Surveillance Court." And the provision is illuminated on, including any prohibition on disclosure.

Now, one Senator has contended that limits the challenge on disclosure, on the so-called gag order, which is not true. Under the conference report, under section 215, you may challenge the order, and that includes challenging a gag order on nondisclosure.

This phrase "including any prohibition on disclosure" was stricken by the conferees, and I believe, on a fair representation, on agreement by the distinguished ranking member and me. He is, of course, free to speak for himself. But the reason it was stricken—whether it was with Senator LEAHY's concurrence or not—was we did not want to limit the grounds for the court on reviewing the order.

If you say there is a specification on prohibition of disclosure, it may raise the inference that is the reason the court would challenge legality. But there is no limitation on the challenge

to legality. That would enable the petitioner to challenge legality on disclosure or for any other reason. So the opportunity to stop a gag order is preserved under the conference report.

A second contention which has been raised is that the conference report, on section 215, should not have gone beyond the three criteria for establishing a foreign power. In a closed-door briefing, the Government presented persuasive reasons to have latitude for the court to authorize an order for other tangible things, records, where there was a terrorism investigation and there was good reason to believe these other tangible records were important for that terrorism investigation.

That was not in the Senate bill, but that was a provision that was insisted upon and pressed for by the House, and I thought it was within the realm of reason, and we included it. But the protection of civil liberties is present in the conference report because the court has to find that it is a justifiable request on a terrorism investigation and important to that terrorism investigation.

I have already gone into some detail on the protections in the bill for delayed notice provisions, so-called sneak and peek, where the Senate bill had a 7-day requirement, the House bill had 180 days, and we compromised at 30 days. The Ninth Circuit said that 7 days was presumptively reasonable. The Fourth Circuit has set the time at 45 days. In putting in a 7-day notice, we were not unaware of the fact that was a good negotiating position from which to start. The House made a concession of 150 days, going from 180 to 30. We made a concession of 30 days.

Bear in mind, on the delayed notice, that is where there is a surreptitious, secret search. There has to be justification to get a search warrant to have a delayed notice, and it has to be shown to the satisfaction of the judge that if there was not that delay, the investigation would be impeded.

Bear in mind, for those listening, the traditional safeguard on civil liberty is to interpose an impartial magistrate between the police, law enforcement, and the citizen, so that when you have a delayed notice provision on a showing of cause, that it would impede the investigation if that were not the case.

We have already gone over in some detail in the RECORD the tightening of the provisions on roving wiretaps, where you have to identify the person involved and show that individual is likely to seek to evade the wiretap as a justification.

A key provision we added on the Senate side was the sunset provision, where the Senate bill was a 4-year provision, and the House bill was 10 years. The House wanted to compromise at 7, and we held fast. We had assistance from the White House. The President was personally notified about this. The Vice President participated. We got that 4-year sunset, which is vital, so there will be a review of all of these provisions within the 4-year period.

Bear in mind that the sunset applies to the three controversial provisions in the PATRIOT Act. It does not apply to the national security letters because the national security letters were not authorized by the PATRIOT Act. They have been in existence for decades.

Now I come to a key consideration under the national security letters, where some have objected to the conclusive presumption, where there is a certification as provided for in the conference report by ranking officials that nondisclosure is required because disclosure would hinder national security or would hinder diplomatic negotiations. I have discussed this in the past, but it is worth repeating. The Senate bill that was adopted unanimously, 18 to 0, in committee, and without consent on the Senate floor, had the provision which is virtually identical to the conference report. The Senate bill provides that in reviewing a nondisclosure requirement:

The certification by the Government that disclosure may endanger the national security of the United States or interfere with diplomatic relations shall be treated as conclusive unless the court finds that the certification was made in bad faith.

That language is carried over in identical form in the conference report, with the addition that the conference report is more protective of civil liberties because the certification cannot be made by just anybody in the Government; it has to be made by a ranking official, such as the Attorney General or Deputy or head of the FBI.

Again, let me invite those who have questions on the bill to come to the Chamber so we can have a discussion. If anybody has challenged any of the provisions, I invite them to come and state their concerns. I believe it is in the interest of the consideration by the Senate that we consider the bill in detail so that the Members can understand it and we can deal with specific objections that anyone has.

How much time remains of the hour in the morning session?

**THE PRESIDING OFFICER.** Four minutes 25 seconds remains.

**MR. SPECTER.** I yield the floor.

**THE PRESIDING OFFICER.** The Senator from Vermont is recognized.

**MR. LEAHY.** Madam President, I should note while the distinguished chairman, the senior Senator from Pennsylvania, is on the floor, that nobody has worked more diligently or with more of an effort to reach out to both Republicans and Democrats than he has, and to the other body. In many ways, he has a thankless job, because he is committed, as I am, to having the best antiterrorist legislation this country can have. He is committed, as I am, to having the best tools for law enforcement. He is committed, as I am, to making sure our liberties as a people are protected.

I am concerned that in the process—not through the fault of the distinguished chairman—many wished to raise further issues involving our lib-

erties, and people were excluded. That is why we are running into a somewhat contentious issue as to whether this conference report should go forward.

Earlier this week, I spoke about how the world changed on September 11, 2001. Nearly 3,000 lives were lost on American soil. In the aftermath of the attacks, Congress moved to quickly pass antiterrorism legislation. The fires were still smoldering at Ground Zero when the PATRIOT Act became law on October 30, 2001, just 6 weeks after that horrible day. I know how hard we worked. I was chairman of the Judiciary Committee when we moved that legislation through.

Security and liberty are always in tension in our free society, and especially so in the wake of the attacks of 9/11. The American people today and the next generation of American citizens depend on their elected representatives to strike the right balance. Preventing the needless erosion of liberty and privacy requires constant vigilance and vision from those whom the people have entrusted with writing the laws. It is the 100 men and women in this body who have to protect the rights and liberties of 290 million Americans.

I see the distinguished Senator from New Hampshire on the floor, Mr. SUNUNU. He made reference yesterday to one of my favorite quotes from one of our Founding Fathers, Benjamin Franklin, in which he reminded Americans that those who give up their liberties for security deserve neither, and I might say in the long run get neither.

I negotiated many provisions of the PATRIOT Act and am gratified to have been able to add some checks and balances that were not contained in the initial proposal. But as I said at the time, the PATRIOT Act was not the final bill that I or any of the sponsors on either side of the aisle would have written if compromise had been unnecessary.

In reviewing the PATRIOT Act this year, Congress once again tried to strike the right balance between the security and the liberty that is the birthright of every American. The public expects and deserves that we will diligently fight to achieve that balance. But regrettably, the PATRIOT Act reauthorization bill that is now before the Senate does not accomplish the goal of balance. The bipartisan Senate bill which the Senate Judiciary Committee, under the leadership of the distinguished Senator from Pennsylvania, and then the Senate adopted unanimously—unanimously, Madam President—reached a better balance. Even that, because it was a matter of compromise, was not a perfect bill. None of us thought it was, and we knew there were matters others insisted be added which we hoped to be improved in conference.

But the Senate bill, such as the PATRIOT Act itself, was a legislative compromise achieved through good-faith, bipartisan negotiations. Chairman SPECTER and I were able to

achieve a good enough bipartisan compromise that we were able to gain the support of all the Republicans and all the Democrats serving on the Judiciary Committee, including Senators who sponsored the SAFE Act. As a result of that bipartisan compromise and bipartisan effort, it passed unanimously in the Senate last July.

Then the Senate leadership very responsibly moved promptly to appoint conferees. But, unfortunately, the other body did not act as swiftly, and we lost several months that could have been used to seek common ground between the two versions of the bill. The House delayed appointing conferees for several months. They pushed us up against the December 31 deadline from the sunsets in the PATRIOT Act.

In fact, it was only last month that the House finally acted to name conferees, and then the conference met only once and that was for opening statements. There was never a working meeting of the conference in which positions were debated and the conferees were able to offer improvements and vote on them. There was no opportunity to debate this conference report at a public meeting of conferees, and no opportunity to offer improving amendments for consideration by the House-Senate conference and votes.

Instead—and this is most regrettable—there came a point where Democratic conferees were shut out of the process. Key negotiations took place only among Republican conferees and the administration, especially the Department of Justice. The earlier informal bipartisan discussions of which I had been involved had been promising. Republicans and Democrats were working to come together, and a good deal of progress was being made.

Much of what is good about the conference report that is before us is owed to those discussions. I can't help but think what a better bill we would have on the floor today had we not been locked out of those discussions.

I thank Chairman SENSENBRENNER for acknowledging this week that we came to those discussions with good ideas for accountability, for sunshine, for increased oversight, for judicial review, and for better standards by which to measure the authorities being considered for the Government. Tentative agreements were also being reached on removing a number of extraneous provisions, particularly from the House-passed bill.

The House version of the bill was loaded with extras, many of which had no connection to fighting terrorism. These provisions were tacked onto the bill as floor amendments, with little or no debate. Some raised very serious concerns. For example, the original House bill made significant procedural changes to Federal death penalty laws, including the opportunity for Federal prosecutors to convene a new jury and effectively get a do-over whenever they fail to persuade a jury to impose a death sentence. Can you imagine what

this is saying? A jury comes back and says we cannot agree to give this person the death penalty. One of the greatest things about our jurisprudence system is our jury system. They come back and the prosecutor says: We don't like that; throw them out, bring in a new jury; let's do it over; let's keep doing it over until we get the result the Government wants. This and other provisions were dropped or substantially modified during the early days of bipartisan meetings.

No one will be surprised to hear that after Democrats were excluded, the negotiations took a turn and resulted in a one-sided conference report. The media reported in banner headlines on November 17 that Congress had arrived at a deal on the PATRIOT Act; it is all over, we are finished. A tad premature. In fact, our first draft conference report was widely criticized by Members of Congress in both parties and across the political spectrum. Among the Republican Senate conferees, there was not the minimum support needed.

Since that time, I have continued to work with other Senate conferees to push for improvements. I also reached out to the White House. I was concerned because the administration had gone along with having us excluded and basically stopping the good progress we were making. But I spent time with them; I reached out to them. And I had many discussions with Chairman SPECTER. The chairman and I have joked on occasion that we spend more time talking with each other, more telephone calls back and forth to each other than anybody else. I say that as a compliment to Senator SPECTER because, as chairman, he has worked to include Republicans and Democrats in all these matters. I especially commend the other Senate Democratic conferees—Senators KENNEDY, ROCKEFELLER, and LEVIN. They have been constructive throughout the process.

Since November 17, when it was reported that this process had been concluded, our efforts led to significant improvements in the conference report. We succeeded in making this a better bill than the earlier one being insisted upon before Thanksgiving. The current bill contains 4-year sunsets, not 7 or 10-year sunsets. It no longer contains a provision that would have made it a crime to merely disclose the receipt of a national security letter. The ban against talking to a lawyer without first notifying the Government in connection with the receipt of a national security letter was modified. Imagine that, it basically said you can't talk to a lawyer before you check in with your Government first. We produced some improvements and better balance, and for that, Americans will be better protected.

I believe that there is still more that we can do and should do before finalizing this important measure. There are more improvements that we can make and, I believe, would have made in an open, bipartisan conference.

There are more assurances we can include in the law so that the American people can have greater confidence in the law, how it will be utilized and how Congress and the courts will ensure their rights are protected.

This week, along with Senator SUNUNU, Senator CRAIG, Senator MURKOWSKI, Senator HAGEL and others, I cosponsored a bill to provide a short-term extension of the expiring PATRIOT Act provisions so that we can continue working to make additional improvements to the law. I was disappointed to hear that some are saying that unless this conference report is passed in this form, they would stand by to allow the PATRIOT Act provisions like that regarding sharing of important information with our intelligence community to expire. Those of us working to improve the bill are not taking that position. We want the best bill we can achieve and the greater protection of Americans' civil liberties.

In an editorial just yesterday, USA Today chided the Bush administration and its allies in Congress for "resist[ing] calls for more meaningful protection against invasion of privacy and abuse of civil liberties." It supported the proposal that Senator SUNUNU and I have advanced to extend the PATRIOT Act for 3 months to allow more time to fix what is wrong.

I am encouraged that an FBI spokesman is now endorsing the improvements we have been able to achieve over the last month and which the administration had initially opposed. I know that together we can do better.

I did not sign the conference report in its current form. I understand that on Wednesday more than 200 Members of the House, both Republicans and Democrats, voted to recommit this conference report and continue working to improve it. I have spoken to Senators on both sides of the aisle who would like to see us work out a better bill and stronger protections for the American people. I agree and will continue working to achieve that. I believe that the approach Chairman SPECTER and I took of working together in a bipartisan manner is the better approach. I think that had we followed through with that approach we would have reached a better balanced bill and the American people would have more confidence in it.

It is not just the provisions of the law itself, but the way they are administered and enforced and the perception of the American people that matter. Let me give an example. As librarians and others across the country raised concerns about the use of the business records subpoena authority in the PATRIOT Act, Attorney General Ashcroft could have defused the situation from the outset. Instead he was secretive and scared the American people. He would not work with or share information with the Congress. He claimed variously that the provision had not been used with libraries but then obfuscated when asked whether national security

letters were being used in connection with library records. He then classified even the number of subpoenas served upon libraries. When that number was later unclassified, is there any wonder that people remained concerned?

He could and should have worked with Congress to develop better standards and review and oversight. This could have been done administratively or with a legislative correction. Instead, he hoarded the information, raised suspicions and attacked anyone who raised questions about how government power was being used.

I want to express my appreciation, in particular to Chairman SPECTER, but also to Chairman SENSENBRENNER. I do not question their motivation. I respect them. Together they have worked with us to correct several of the problems and concerns about earlier drafts of this conference report. As I have noted, Chairman SPECTER did speak with me and we had many, many discussions about these issues throughout this process. I appreciate his efforts. I regret that we were not able to achieve more of what we had achieved—both the bipartisan process and some of the specifics of the Senate-passed bill.

Both Chairman SENSENBRENNER and Chairman SPECTER share my interest in congressional oversight, and the conference report is a better bill because of it. Throughout the early informal, bicameral discussions and earlier during the Senate's bipartisan consideration of this matter, I advanced several "sunshine" provisions to facilitate oversight and ensure some measure of public accountability for how the government uses its powers. The conference report contains most of these proposals, including public reporting and comprehensive audits on the use of two controversial PATRIOT Act provisions—both business record subpoenas and national security letters.

In addition to sunshine provisions, I proposed that we retain the sunset mechanism that worked so well in the original PATRIOT Act. Back in the fall of 2001, Republican House Majority Leader Dick Armey and I insisted on 4-year sunsets for certain PATRIOT Act powers with great potential to affect the civil liberties of Americans. Those sunsets contributed greatly to congressional oversight. The fact that they were included is the reason we are going through this important review and renewal process now.

This year, I proposed and the Senate agreed to 4-year sunsets on three key provisions. The House initially approved 10-year sunsets on two provisions. With steadfastness and hard work on the part of Senate conferees, we were able to achieve the 4-year sunsets that were in the Senate bill. I commend, as well, Representative CONYERS and the House for passing an instruction to the House conferees to abide by the 4-year sunsets. Despite strong majority support in both bodies for 4-year sunsets and even after the House had voted to instruct its con-

ferees, it took weeks to persuade Republican leaders in the House and the administration to accept this common-sense measure.

The enhanced oversight provisions and 4-year sunsets are positive features of the conference report to be sure, but many problems remain. Let me touch briefly on some of the flaws in this conference report that are still troubling to Senators from both sides of the aisle and to those concerned about civil liberties advocates from both the right and the left.

I will start with the conference report's treatment of section 215 of the PATRIOT Act, the so-called library provision. Under Section 215, the government can obtain a secret order that compels access to sensitive records of American citizens, potentially library records, and also imposes a permanent gag order on the recipient.

Before passage of the PATRIOT Act, there were two significant limitations on the FBI's power to seize business records. First, it could be used only for a few discrete categories of travel records, such as records held by hotels, motels, and vehicle rental facilities. Second, the legal standard for obtaining the order was demanding. The Government had to present specific and articulable facts giving reason to believe that the subject of the investigation was a foreign power or an agent of a foreign power.

The PATRIOT Act did away with these limitations. It both expanded what the FBI may obtain with a section 215 order and it lowered the standard for obtaining it. Under current law, the government need only assert that something—anything—is sought for an authorized investigation to protect against terrorism or espionage, and the judge will order its production. Under this provision, what counts as an authorized investigation is within the discretion of the executive branch.

The Senate, in its reauthorization bill, rightly reestablished a significant check on this power. Under the Senate bill, relevance to an authorized investigation is not enough; the government must also show some connection between the records sought and a suspected terrorist or spy. This is a fundamental protection that would not hamstring the government, but would do much to prevent overreaching in government surveillance. Unfortunately, it was stripped out in conference.

The conference report is deficient with respect to section 215 in two other respects. First, unlike the Senate bill, the conference report does not permit the recipient of a section 215 order to challenge its automatic, permanent gag order. Courts have held that similar restrictions violate the first amendment. Contrary to what has been suggested this morning, I fought to keep the Senate language on this point, to make sure that a section 215 gag order could be challenged in court. I thought it had been accepted at one point during the early, bipartisan negotiations.

It was removed from the working draft when the bipartisanship ended and Democratic conferees were shut out.

Second, the conference report allows the Government to use secret evidence to oppose a judicial challenge to a section 215 order. At the Government's request, the court must review any Government submission in secret, regardless of whether it contains classified material. This has the potential to turn an adversarial process into a kangaroo court, and will at a minimum make it extremely difficult for the recipient of a section 215 order to obtain meaningful judicial review that comports with due process. I proposed that we at least allow for limited disclosure, with appropriate security protections, if necessary for the court to make an accurate determination. Again, this modest attempt to allow for meaningful judicial review was tentatively accepted during early bicameral discussions, only to be stripped out when the administration stepped in.

The conference report also falls short on its treatment of National Security Letters, or NSLs. These are, in effect, a form of secret administrative subpoena. They are documents issued by FBI agents without the approval of a judge, grand jury, or prosecutor. They allow the agents to obtain certain types of sensitive information about innocent Americans simply by certifying its relevance to a terrorism or espionage investigation. Like section 215 orders, NSLs come with a permanent gag. The recipient of an NSL is prohibited from telling anyone that he has been served.

Proponents of this conference report have made much of the fact that it creates an explicit right to challenge an NSL in court. But even under current law, NSLs can be, and have been, successfully challenged. Indeed, in recent litigation, the Government has taken the position that NSL recipients have an implied right to judicial review. Making this right explicit makes sense, but it does not, in itself, offer significant protection.

That is particularly so given the one-sided procedures set forth in the conference report, which do not allow meaningful judicial review of NSLs' gag order. The conference report requires a court to accept as conclusive the Government's assertion that the gag is needed, unless the court finds the Government is acting in bad faith. This raises serious first amendment and due process concerns. I cannot understand why anyone would insist on provisions that tie the hands of Federal judges and further reduce our confidence in the use of these tools. Yet, despite strong opposition to this provision from the right and the left sides of the political spectrum, House Republicans refused to strip it out.

In an editorial this week, the Washington Post noted the conference report's deficiencies with respect to section 215 orders and NSLs, but called them "not unsolvable," adding "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 accurately."

Alternatively, Democratic conferees proposed a 4-year sunset on the NSL authority. While a sunset is no substitute for substantive improvement, it would at least have ensured that Congress would revisit this issue in depth. We would have had an opportunity, then, to study how these judicial review procedures worked in practice. Again, House Republicans rejected this path to bipartisan compromise.

The conference report's treatment of the PATRIOT Act's so-called sneak and peek provision is another area of concern. Section 213 of the PATRIOT Act authorized the Government to carry out secret searches in ordinary criminal investigations. Armed with a section 213 search warrant, FBI agents may enter and search a home or office and not tell anyone about it until weeks or months later.

It is interesting to recall that 4 years ago, the House Judiciary Committee took one look at the administration's original proposal for sneak and peek authority and dropped it entirely from its version of the legislation. As chairman of the Senate Judiciary Committee, I was able to make some significant improvements in the Administration's proposal, but problems remained. In particular, Section 213 says that notice may be delayed for "a reasonable period," a flexible standard that has been used to justify delays of a year or more. Pre-PATRIOT Act case law stated that the appropriate period of delay was no more than 7 days.

The Senate voted to replace the "reasonable period" standard with a basic 7-day rule, while permitting the Government to obtain additional 90-day extensions of the delay. The conference report sets a 30-day rule for the initial delay, more than three times what the Senate, and pre-PATRIOT Act courts, deemed appropriate. The shorter period would better protect fourth amendment rights without in any way impeding legitimate Government investigations. The availability of additional 90-day extensions means that a shorter initial time frame should not be a hardship on the Government.

This conference report also is loaded with extraneous provisions that have nothing to do with the expiring PATRIOT Act authorities, or even with terrorism.

I am particularly concerned that the conference report modifies habeas corpus law, a highly controversial move that is wholly improper to consider in this context. The changes to habeas added here at the insistence of a small number of Republican conferees have nothing to do with terrorism or even more general tools of federal enforcement. These changes were not included in the PATRIOT Act reauthorization bill of either the House or the Senate. They were added late in the conference process, after all Democratic conferees

were shut out of discussions. They received no serious consideration by either body's Judiciary Committee, and have been strongly opposed by the U.S. Judicial Conference and others. And yet these modifications could have very serious consequences—possibly unintended consequences—in habeas cases that are already pending in California and other States.

The conference report includes a version of the Combat Methamphetamine Epidemic Act of 2005, a bill that, like the habeas provisions, is extraneous to the PATRIOT Act reauthorization. The version in the conference report contains troubling provisions that I wish could have been debated fully before we were forced to vote on them in this context. A portion of the bill lowers the threshold of the amount of money or drugs necessary for a defendant to qualify as a "kingpin" and to therefore be subject to a mandatory life sentence. This is an excessively harsh sentence for a pool of people who are not truly drug kingpins. No one has sympathy for producers and dealers of methamphetamines, but the punishment must fit the crime, and in these cases, mandatory life is disproportionate.

During early negotiations on the conference report, I fought to strike title II of the House bill, which included provisions that vastly expanded the Federal death penalty and removed important protections for the criminally accused. I already noted one particularly problematic provision, which allowed Federal prosecutors a "do-over" whenever they failed to persuade a jury to impose a death sentence. Another provision was designed to carve out a category of homicides that would be eligible for capital punishment despite the fact that the defendant did not himself kill, intend to kill, or knowingly create a grave risk of death. Yet another provision would have substantially narrowed the jury's power to consider, as a reason not to impose the death penalty, the fact that other equally guilty offenders in the same case were escaping such punishment. These extraneous and ill-considered provisions were ultimately dropped from the conference report, for which we should all be grateful.

House Republicans did, however, insist on keeping other death penalty provisions in the conference report. The most objectionable of these will revive a small group of pending death penalty prosecutions for aircraft hijacking murders committed in the 1970s and 1980s. Specifically, it is designed to overrule the district court decision in *United States v. Safarini*, which struck the death penalty for a 1986 hijacking offense on the grounds that the Federal Death Penalty Procedures Act of 1994 could not be retroactively applied to a pre-1994 crime, at least absent clear congressional intent to do so.

To my knowledge, Congress has never enacted death penalty legislation

intended to allow the execution of a tiny number of known offenders for crimes they are alleged to have committed from one to three decades previously. Whether the Government can ultimately persuade the courts that this does not violate the letter of the Ex Post Facto and Bill of Attainder clauses, it certainly violates their spirit. It is telling that the Department of Justice, in its testimony before the House Judiciary Committee, strongly recommended adding in a severability clause, in case this provision was ultimately held invalid by a court of law. I share the Department's skepticism regarding the constitutionality of this wrong-headed provision, and deeply regret its inclusion in the conference report.

The reauthorization of the PATRIOT Act must have the confidence of the American people. I believe what we passed in the Senate would have the confidence of the American people. This conference report would not.

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.

The bipartisan bill I introduced with Senator SUNUNU and others to provide a three-month extension for the expiring provisions of the original PATRIOT Act will give us the time to achieve the best bill for all Americans.

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 citizens then by all means, let us take that time.

We should not finalize the conference report on the PATRIOT Act without fully addressing the privacy and civil liberties concerns that remain in the conference report. It is our job in Congress to work as hard as it takes to protect both the security and the freedoms of the people we represent.

A nation built on freedom, as America is, can do better, and if we work together, we will do better.

Mr. President, I yield to the distinguished senior Senator from California 5 minutes.

The PRESIDING OFFICER (Mr. ENSIGN). The Senator is recognized.

Mrs. FEINSTEIN. Mr. President, I thank the ranking member very much. I would like to make a brief statement. I am not sure I can do it in 5 minutes. I may have to ask unanimous consent for a little additional time.

Today the Senate is taking up the conference report to accompany the PATRIOT Act. I am the original Democratic cosponsor of the unanimously passed Senate bill, as well as cosponsor of the Combat Meth Epidemic Act and the Port Security Crimes Act, both of which are incorporated in the conference report. Thus, it is only after careful consideration that I have determined to vote against cloture tomorrow, and I would like to take a moment to explain why.

I fear that it is going to be a very divisive and partisan vote tomorrow. The USA PATRIOT Act has been a valuable tool in our effort to combat terror, but it has also become a divisive point of contention between Democrats and Republicans and, as a result, doesn't have the broad support of the American people. Thus, it is extremely important that every effort be made to reach an accommodation before debate becomes contentious and even more partisan.

Outside the beltway, the USA PATRIOT Act has come to be terribly misunderstood. Many believe it is related to Guantanamo Bay and the detention of prisoners. Others believe it authorizes torture or the secret arrest of Americans. It does none of these things.

At the same time, some have irresponsibly sought to characterize anyone who seeks to improve or criticize the law as somehow playing into the hands of the terrorists. They have implied that the USA PATRIOT Act will expire in its entirety on December 31, and we will be left with no defense against terrorist acts. This, too, is untrue.

What is true is that when it comes to national security, it is so important to build consensus. Our efforts to combat terror in general, and the authorities in the PATRIOT Act specifically, are diminished in effectiveness if they are not seen by most Americans as the product of bipartisan effort in Washington.

I believe our Nation's safety requires this body to reach compromise on this bill.

That is why, when Senator SPECTER asked me to join him in introducing the Senate bill, I agreed. I want to say something. Senator SPECTER has been a wonderful chair of the Senate Judiciary Committee. He listens, he is open, he is smart, he is legally pristine, and he has been a fine leader for the committee.

I believed Senator SPECTER, working with Senator LEAHY and the members of the Judiciary Committee, would be able to build consensus, to reach compromise, and deliver legislation that the American people could be confident represented bipartisan agreement, not politics.

My confidence in Senators SPECTER and LEAHY and my colleagues on the committee was well placed. In July, the committee unanimously reported the bill favorably, and shortly thereafter the Senate, again unanimously, passed the bill.

Having a USA PATRIOT Act reauthorization bill, supported by Senators CORNYN and SCHUMER, KYL AND FEINGOLD, HATCH, KENNEDY, and every single Member of this body gave me great comfort, and I believe was an important step toward healing the divisive partisanship that has come to be associated with the bill.

Unfortunately, that spirit seems to have ended. The conference report process, instead of bringing unity, ap-

pears to have had the opposite result: dividing my colleagues by failing to adequately take into account differing views on elements of the bill. The simple result is that in the next day we are likely to divide into two camps.

In the end, of course, we will extend the PATRIOT Act's expiring provisions in some form because despite the rhetoric, nobody doubts that the provisions will be extended. What is at issue is whether and to what extent modifications are made.

What will be lost is the much needed sense that the PATRIOT Act represents a broad consensus. That may be more important than the specific details of provisions and issues. I believe it is. The bottom line is that having a consensus bill is of paramount importance. So I rise today because I still believe—

The PRESIDING OFFICER. The Senator's time has expired.

Mr. LEAHY. Mr. President, I ask the Senator from California how much more time she requires.

Mrs. FEINSTEIN. May I have 5 minutes more, please.

Mr. LEAHY. Mr. President, I yield 5 additional minutes to the Senator from California.

Mrs. FEINSTEIN. I thank the Senator from Vermont.

Yesterday, I urged Majority Leader FRIST to work as hard as he can to bring people back to the table before the vote. The day before, I urged Attorney General Gonzales to work with Senators LEAHY and SPECTER toward the same end. I have said the same thing to Senators SPECTER and LEAHY personally, and today I renew this request.

Press reports today quote insiders saying that efforts to reach compromise have been abandoned. Some seem to believe that a filibuster fight would be an opportunity to force Democrats into bad votes, thus securing partisan advantage in upcoming elections.

Others seem to believe that the American people can be tricked into thinking that Members such as Senators CRAIG, SUNUNU, MURKOWSKI, HAGEL, OBAMA, DURBIN, FEINGOLD, SALAZAR, and KERRY, all of whom signed a moving letter yesterday explaining why they would vote against cloture, are somehow helping terrorists. Still others, counting the votes, think the opportunity to embarrass the administration is too good to miss.

I reject these positions. Instead, I ask respectfully that we get back to work.

I strongly urge my colleagues to carefully read the letter sent by this group of Senators. While I do not agree with every one of their points, the key issues they raise have merit and should be addressed.

The most important of the issues they raise involve section 215—the so-called library provision—and provisions governing judicial review, particularly of national security letters. I believe on these two issues, as well as

some of the others, continued good-faith negotiation will result in solving the problems in a way that will be acceptable to a vast majority of this body and will not in any way diminish the ability of our law enforcement and intelligence organizations to do their job.

Congress has a long and honorable tradition of putting aside party politics when it comes to national security. We were able to do that in the Senate with this bill. So it is critical that this approach be carried forward to the end.

I believe the unanimously passed Senate bill represents that compromise. And while I understand that some accommodations must be made to the House, these cannot be so great as to destroy the consensus in the Senate that we have built.

I know that Senator SPECTER and Senator LEAHY have worked long and hard. I also know that Senator LEAHY made some compromises to vote for the Senate bill that passed this body unanimously. I asked Senator SPECTER and Senator LEAHY to please try once again to achieve the compromise that we had when the Senate bill passed this body unanimously.

I believe national security deserves no less, and I believe the distinguished leadership of the Judiciary Committee, Senator SPECTER and Senator LEAHY, can achieve this if given the opportunity and if the leadership puts its clout behind bringing the House on board as well.

Absent that, I will vote for the Sununu legislation to provide an element of time. I also ask that the meth bill, as well as the port security bill, be added to his legislation. I thank the ranking member and the chairman and I yield the floor.

The PRESIDING OFFICER. The Senator from Pennsylvania.

Mr. SPECTER. Mr. President, while the Senator from California is on the floor, I want to thank her for the complimentary comments, and I want to thank her for being a very productive and constructive member to the Judiciary Committee not only this year while I have been chairman but for many years. She and I had a 30-minute conversation yesterday by phone, after working hours, talking about these issues. If there are any specific points that trouble the Senator from California, I would be glad to discuss them with her, not only to try to deal with any issue she has, but I find that is a good method for acquainting all the Senators with what is at issue in the bill.

I note there were no specific issues raised, and I am not asking that specific issues be raised. I heard what the Senator from California said, and I agree with her about the point of consensus. Senator LEAHY and I have established a superb relationship, with bipartisanship, which has made the committee function this year, I think, very successfully. I do not think anyone could fault our efforts to come to terms. We just could not do it with the

House of Representatives, in a bicameral system, as to what we could accomplish.

I congratulate Chairman SENEN-BRENNER for going the extra mile. But if we could just run it through the Senate without a bicameral legislature, it would be a little different. Then we would have the Senate bill.

But there is one thing I would disagree with the Senator from California about—when she says we are going to have a bill. We may not have a bill. The majority leader has said he is not going to go along with the 3-month extension. There is a real issue as to whether the House will take up a 3-month extension. We face many situations in the closing days of the Congress where the House finishes its work and departs. We have taken a lot of House bills where we had no choice, when they were gone. But we may well not have a 3-month extension, and this bill may well expire. That is an alternative which has to be considered by every Senator. I believe there are some Senators who would say they will take the responsibility for having the bill expire, the act expire. Some will take that.

If cloture is not invoked and somebody says, Arlen Specter, go back and work on it some more, I will salute and I will be a good soldier and I will go back and work on it some more. But there are going to have to be a lot of moving parts coming into place before there is going to be an extension beyond December 31. I think people ought to consider that.

When the majority leader says he is not for it—if he will not take it up, there will be none. Even if he does take it up and even if we pass it, which we might not—if it is not taken up by the House, there will be none. So I believe we have to consider the alternative that there will not be a bill if this bill is not passed. That brings me back to my point about the specific objections.

I see Senator SUNUNU in the Chamber, and I am anxious to have a colloquy with him, if he is willing to do so. But I just wanted to thank the Senator from California and raise those considerations.

Mrs. FEINSTEIN. I wonder, Mr. President, if you will allow me a brief response to the chairman and manager of the bill.

Mr. SPECTER. May I suggest it be on the time of Senator LEAHY.

Mrs. FEINSTEIN. I don't want to take Senator LEAHY's time.

Mr. LEAHY. How much time is remaining to the Senator from Vermont?

The PRESIDING OFFICER. The Senator from Vermont has 38 minutes. The Senator from Pennsylvania has 45 minutes.

Mr. LEAHY. And the last colloquy with the Senator from Pennsylvania—

The PRESIDING OFFICER. It was on the time of the Senator from Pennsylvania.

Mr. LEAHY. I yield to the Senator from California.

Mrs. FEINSTEIN. I very much appreciate the conversation we had last night, where I tried to share this view. I thank the Senator for listening.

It seems to me, and Senator LEAHY will certainly correct me if I am wrong, that the crux of the problem revolves around two sections of the bill. It seems to me there is more than one way to solve that problem. I just think if the two of you got together, and the chairman of the Judiciary Committee of the House, that there might be consensus reached. I believe the rest of the bill certainly can go into play. I do not see any problems with those, on my part. But I think Senator LEAHY, who has participated in this—let me say another thing.

I believe there is a real problem in these conferences where people get shut out at certain points. It is counterproductive. I would urge that not happen in the future because when it does, I believe it conditions, negatively, the entire remainder of the conference.

The PRESIDING OFFICER. The Senator from Pennsylvania.

Mr. SPECTER. Mr. President, on my time, if the Senator from California would identify the two sections she is concerned with, I would appreciate it.

Mrs. FEINSTEIN. It is the national security letters and section 215.

Mr. SPECTER. I thank the Senator from California and yield the floor.

Mr. LEAHY. Mr. President, I also thank the Senator from California for her involvement. Nobody wants to kill the PATRIOT Act by this action. I know our distinguished majority leader has said he would oppose the extension. We will see what happens in that vote. Many of us say we will oppose things, and they happen. I am talking about the 3-month extension. Even if the other body has left, they always leave back a couple of people who can do things by unanimous consent.

The Senator from New Hampshire is in the Chamber. How much time does he wish?

Mr. SUNUNU. May I have 4 minutes to touch on a few points?

Mr. LEAHY. I yield 4 minutes to the Senator from New Hampshire.

The PRESIDING OFFICER. The Senator is recognized.

Mr. SUNUNU. Let me begin by addressing a concern that was just raised. It was suggested that if cloture is not invoked tomorrow that there might not be a 3-month extension and the expiring provisions of the PATRIOT Act, which are now law, would effectively be killed. Why would there not be a some short-term extension of the PATRIOT Act of 3 months or 6 months? It would be because some Member of Congress—I hope no one in the Chamber at the moment—but some Member of the House or Senate thinks that we will be better off without a PATRIOT Act, rather than with a 3-month extension.

I suggest, No. 1, that is absolutely irresponsible, and, No. 2, that anyone who would make that argument is sug-

gesting that the President, Chairman SPECTER, and the ranking member, Senator LEAHY, are insincere in their suggestion that the tools provided to law enforcement under the PATRIOT Act are extremely important tools that law enforcement genuinely needs.

Anyone who would be willing to oppose a temporary extension and prevent some elements of the PATRIOT Act to remain in force is either behaving irresponsibly or they are arguing—and it may be a heartfelt belief on that person's part that current law actually is not as important as they had previously suggested. I believe everyone can decide for themselves what they think the likely option, the almost certain option would be if cloture is not invoked.

With regard to the substantive concerns, there are many. But let me first address the issue of the national security letters. Under the conference report, there is no meaningful judicial review of a national security letter or its accompanying gag order because the threshold that has to be met by an individual or a business served with a national security letter is a showing of bad faith on the part of the Federal Government. You will never win that argument in court. You will never be able to meet that high a threshold. Therefore, even in the most egregious cases, you will never overturn the national security letter or its accompanying gag order.

The suggestion that this concern is moot because similar language was in the Senate-passed version is irrelevant because that Senate-passed version also included a real standard on Section 215 subpoenas, which required the individual to be connected to a terrorist or spy; it included a judicial review of the gag order associated with a 215 order; and it included a 7-day notification period for delayed notice, or sneak and peak search warrants. All of this, which again, we approved in the Senate package, has been scrapped.

When we saw the Senate bill, many of us were not happy with that national security letter language. But in that bill we had other substantial gains for civil liberty protections, and those have been left at the doorstep by this conference report. To come back and say to us now that our concerns about national security letters do not count because they were part of some previous compromise that is no longer before us avoids the substantive concerns we have raised.

There are other problematic provisions that were put into the bill in conference that were not part of the Senate bill. Under the conference report, you have to tell the FBI if you want to challenge a national security letter or 215. That means you have to tell the FBI you have hired an attorney and you have to tell the FBI the name of the attorney.

The PRESIDING OFFICER. The time of the Senator has expired.

Mr. SUNUNU. I ask for 1 additional minute.

Mr. LEAHY. I yield an additional minute.

Mr. SUNUNU. I am not a lawyer. I am an engineer by training. But I know of no other provision in law where that is required. Even if it is required in a few very limited cases in law, I believe this will provide a chilling effect on our right to counsel. I believe such a requirement is an unnecessary limitation on our civil liberties.

I have one final point about the arguments made by the administration and by some here in the Senate. The suggestion was made that changes do not need to be made because there has been no evidence of abuse of the existing law. We do not seek to insert protections for civil liberties in law because we do not trust a particular person. The Framers enacted the fourth amendment to the Constitution, not because they didn't trust George Washington but because they wanted to protect these freedoms in perpetuity.

I yield the remainder of my time.

The PRESIDING OFFICER. The time of the Senator has expired.

The Senator from Pennsylvania is recognized.

Mr. SPECTER. Mr. President, the Senator from New Hampshire is wrong on what this law provides. When he picks up the national security letter and says it may be challenged only on the bad faith requirement, he is wrong. There may be a challenge and the national security letter may be quashed under the express terms of the conference report if it is unreasonable or oppressive. The national security letter was not created by the PATRIOT Act, but we took this occasion to put civil liberty safeguards in this bill on the national security letter by eliminating the prohibition against consulting with a lawyer. Today, if you get a national security letter, you can't talk to a lawyer.

The conference report gives an explicit right to talk to a lawyer. There had been a provision that before you talked to a lawyer you had to tell the FBI who the lawyer was. Senator LEAHY raised an objection to that point, and he was right, and it was corrected. Yet if the FBI asks you who your lawyer is, then you have to tell them. But you don't have to go to the FBI first and disclose who your lawyer is.

But there are significant changes in the conference report beyond the bad-faith issue that the Senator from New Hampshire talks about, and we ought to recognize that. But this conference report goes a long way to protect civil liberties by specifically saying you can go to a lawyer and get it quashed for certain reasons.

As to the bad-faith requirement, the Senator from New Hampshire skims lightly over the fact that the Senate bill was even tougher than the conference report by going on to other sections. That is obscuring the issue. Take up the bad-faith requirement. I already read it a couple of times, this morning

and on Monday and on Tuesday. But the Senate language was identical.

But the conference report is more protective of civil liberties because, while the Senate bill said the Government had to certify anybody in the Government, the conference report requires a ranking official.

But the Senator from New Hampshire then skips over to the 7-day requirement on notification.

There is already a protection of civil rights because the court has to make a finding that the delayed notice is important to the investigation, or will hinder the investigation.

To have the Fourth Circuit saying "45 days" when you have the current law saying "reasonable," which could be anything, as a bargaining matter, we come with the Senate report at 7 and the House is at 180. We compromised at 30, and I think that is not unacceptable. Is it what ARLEN SPECTER would like, or what Senator SUNUNU would like?

But when the Senator from New Hampshire talks about getting an agreement where the House and Senate disagrees and you have an impasse, you don't have a bill.

Chairman SENSENBRENNER went the extra mile. Is he going to go further? That is a big question? If there is an impasse, there is no bill.

To repeat, if cloture is not invoked, we don't have a bill, and I will go back to work. I will go back to the drawing board, and I will try to get a bill. But that doesn't say that there will be a bill when the majority leader has said he is not going to take up an extension and you have to get agreement from the House.

On the section 215 provision, the conference report does give additional leeway beyond the three-pronged test. But we still have judicial review which you do not have today; and that is the traditional way of interposing the impartial magistrate between the citizen, on the one hand, and the law enforcement officers on the other. There have to be many hurdles gone through to get a terrorism investigation authorized. It is only a terrorism investigation where the court can allow the latitude to get somebody's records where it is important to the investigation.

I yield the floor.

The PRESIDING OFFICER. The Senator from New Hampshire.

Mr. SUNUNU. Mr. President, I ask to be yielded 1½ minutes.

Mr. LEAHY. I yield 2 minutes.

The PRESIDING OFFICER. The Senator is recognized.

Mr. SUNUNU. Mr. President, I want to be courteous to my colleagues who wish also to speak, so I will briefly address a couple of the points raised.

First, I never suggested that the ability, allowed under the conference report, to hire a lawyer to challenge an NSL is an improvement. I am for that. I don't know that is some great show of benevolence on the part of the Federal Government that now for the first time

you will actually be allowed to contact a lawyer if you are served with a national security letter. So I appreciate that. But this is about much more than that simple fact.

Judicial review is important. But to have a meaningful judicial review you have to have at least a threshold, that the recipient of a NSL may actually be able to achieve. I suggest that the showing of oppressive or abusive behavior by the Federal Government, the showing of bad faith, is simply too high a threshold to make that judicial review process meaningful.

Finally, I come back to the suggestion that if this bill fails on cloture, we will not have a bill, and portions of the PATRIOT Act and the lone wolf provision will expire. I do not take that to mean that the Senator from Pennsylvania will not support a 3-month extension. I hope and I believe that he would in such an event. I hope and I believe that the House would support such an extension of the expiring provisions because having them remain in place on a short term basis of 3 months or 6 months, is much more important than having these provisions expire.

If those who do not agree with my opposition to cloture on the conference report really think they will have no bill, then obviously their arguments that the PATRIOT Act is a very important piece of legislation don't have credibility.

I yield the floor.

Mr. SPECTER. Mr. President, when the Senator from New Hampshire talks about a high bar for upsetting a national security letter, he overlooks the provision that you can quash, if it is unreasonable.

If the judge finds it is unreasonable, is that too high a bar?

Mr. SUNUNU. Mr. President, I will address the question and the concern. I think the threshold is too high. But I would prefer that time be provided to others—there are a number of others on the floor—who support my position and oppose cloture.

Mr. SPECTER. On my time, I redirect the question to the Senator from New Hampshire who says the bar is too high.

Is it a high bar to quash a national security letter, if a court finds it is unreasonable?

Mr. SUNUNU. Mr. President, that is not the only basis on which these will be reviewed. The national security letter and the gag order require showing of bad faith on the part of the Government. I believe that standard as written in the conference report will prove to be too great of a threshold for individuals or businesses to have any reasonable chance of meeting. We have had 30,000 national security letters issued. To the best of my knowledge, none of them have been overturned. I think we owe the public a clear, reasonable, and pragmatic standard in order for those to be overturned. I do not believe this conference report includes such a standard.

Mr. SPECTER. Mr. President, the Senator from New Hampshire is mixing apples and oranges. When he talks about bad faith, he is talking about disclosure. When he talks about a motion to quash a national security letter for its being unreasonable, it may be quashed on that ground alone.

I am not going to ask the question again. I asked it twice. On neither occasion was there an answer that it was too high a bar to quash a national security letter if it is unreasonable. I will let my colleagues decide that who are voting on this.

If the court has latitude to quash the national security letter because it is unreasonable, this is a fair standard.

When the Senator from New Hampshire—if I could have his attention before he leaves—talks about 30,000 national security letters, I already said on the floor that is the Washington Post. But that is not accurate. I have invited my colleagues, and I will not ask the Senator from New Hampshire if he has sought a classified briefing. But I can't tell you what the answer to that is. Although I have asked the Department of Justice to release information to show the Washington Post statement of 30,000 is out of line and not accurate, I ask my colleagues not to vote on this bill based on what they read in the Washington Post.

Where you have a contested issue—and I put this before the Senate on Monday—go to the Department of Justice, they will give you a classified briefing and tell you what the facts are. Don't vote on this bill by what you read in the Washington Post.

I yield the floor.

The PRESIDING OFFICER. The Senator from Vermont.

Mr. LEAHY. Mr. President, one concern I have is, the Senator from New Hampshire is correct, you have an extraordinarily high bar in trying to overturn a gag order. It is extraordinarily high and raises in my mind some significant first amendment questions.

As to the 30,000, it is difficult to get an answer to this because the Justice Department has been remarkably tightlipped. They have not answered questions. Many times in the normal course of oversight they would not answer the questions. I don't know how many of my letters that have gone down there have been unanswered on these issues. It is extremely difficult to get an accurate and complete answer from this Department of Justice. That is one of the reasons we are so concerned.

I might say, the idea that we have to have a classified briefing which can't be questioned and is totally in the hands of the Department of Justice is one of the things that concerns Americans in the PATRIOT Act.

I yield 1 minute to the distinguished Senator from Wisconsin and 4 minutes to the distinguished Senator from Oregon.

Mr. FEINGOLD. Mr. President, the point the chairman was discussing with

the Senator from New Hampshire, it is the Senator from Pennsylvania who is mixing apples and oranges on the NSL requests.

Let me point out these proceedings where you are supposed to challenge an NSL—they are in secret. They are in secret. The person challenging the NSL cannot see what the Government is arguing. So it is all well and good to say there is review of the NSL, but the challenge is not done in a fair proceeding. It is the chairman mixing apples and oranges.

This is the second time the chairman has urged me to get a classified briefing. I did and it did not change my view of the underlying points being made, whether the Washington Post was completely accurate or not. I had that briefing and I tell you I didn't have the same reaction the Senator had.

I yield the floor.

The PRESIDING OFFICER. The Senator from Pennsylvania.

Mr. SPECTER. On my time, what apples and oranges am I mixing, I ask Senator FEINGOLD?

Mr. FEINGOLD. By not acknowledging the difference of the kinds of proceedings that take place with regard to an NSL and normal criminal proceedings. Those are different kinds of proceedings.

Mr. SPECTER. Of course they are different.

Mr. FEINGOLD. That makes a difference on how one regards the ability to challenge.

And the secrecy, the person challenging the NSL cannot even see what the Government has. That is very different than a normal criminal proceeding.

Mr. SPECTER. Mr. President, I think the Senator from Wisconsin does not know the difference between an apple and an orange. This is not a criminal proceeding. If you have a criminal proceeding and a search warrant, you go into a court with a motion to quash and you put on witnesses, although some of those may be in camera.

I was a district attorney for 8 years and there are occasions where they are in camera. If there are national security issues involved, they are consistently in camera on a variety of procedures.

To say that I am mixing apples and oranges when you compare this to a criminal proceeding simply indicates the Senator from Wisconsin does not know the definition of an apple.

I yield the floor.

The PRESIDING OFFICER. The Senator from Oregon is recognized for 4 minutes.

Mr. WYDEN. I have enormous respect for Chairman SPECTER and Senator LEAHY, and will say what is so troubling about this particular period: Virtually every single day, almost every day, we see another report about the administration trying to skew the bounds between fighting terrorism ferociously and protecting the civil liberties of the people of our country.

The front page of the paper today: Secret Pentagon databases are kept. Essentially, the administration, when somebody digs it up, finds out that all of this is being done—again in secret.

As I have said many times, the two concepts—security and civil liberties—are not mutually exclusive, and when crafting legislation, they be approached in tandem. In fact, it is my view that the promotion of American security and the protection of Americans' rights and freedoms should be mutually reinforcing principles. If one goal is abandoned for the other, or one goal carries less importance than the other, then a new solution must be found.

A new solution is certainly needed in this case. The PATRIOT Act conference report reflects the wholesale rejection of this two-pronged approach and relegates civil liberties to second class status.

The conference report strips out those Senate provisions that helped ensure good Congressional oversight. It limits the ability of law-abiding Americans to defend themselves from possible PATRIOT Act abuses. These changes do not make the PATRIOT Act a more effective tool for fighting terrorism; ultimately, they leave Americans more vulnerable to violations of privacy and the PATRIOT Act more susceptible to abuse.

I am not going to go through the whole bill, but would like to highlight one issue in particular that Oregonians have raised with me—National Security Letters. National Security Letters authorize the FBI, without judicial approval, to obtain Americans' sensitive information.

Senator SPECTER has enormous technical legal skills, and I am very concerned about the national security letters, as well. I sit on the Intelligence Committee. Of course we cannot get into any aspect of what goes on in those debates, but it seems to me any way you parse the legal language with respect to the conference report and the national security letters, it is not balanced. It is, once again, skewed against the rights of the individual.

The Washington Post recently reported that the FBI is using National Security Letters to go on fishing expeditions, and the FBI issued at least 30,000 NSLs in the last year alone. In these fishing expeditions, the FBI reportedly casts a wide net, gathering personal information on innocent Americans.

The Post article describes the experience of George Christian of Connecticut. Mr. Christian manages digital records for three dozen Connecticut libraries and reportedly received an NSL seeking "all subscriber information, billing information and access logs of any person" who used a specific computer at a certain library branch. The FBI reportedly instructed Mr. Christian that he could never talk to anyone about the request. In spite of this apparent gag order, he decided to challenge the NSL. The court files are

sealed, but the Post reported that the judge described the basis for the NSL as laughably vague.

With the FBI issuing at least 30,000 NSLs a year, how many other Americans like Mr. Christian are out there? How many Americans have had personal information turned over to the federal government—who they've called, where they've traveled, what they've bought—because someone didn't have the time or the money to fight an unreasonable NSL? Who is going to have access to all the information the FBI has reportedly gathered that may now be in vast government databases? If any one NSL can be used to gather information on thousands or even tens of thousands of Americans, one can only guess how many Americans have already been affected by these fishing expeditions.

As pointed out in the Post article, the FBI acknowledged from the beginning that the NSL was an incredible power that had to be used judiciously. As one FBI employee stated in a 2001 memo sent to all 56 field offices:

NSLs are powerful investigative tools, in that they can compel the production of substantial amounts of relevant information . . . However, they must be used judiciously.

Thirty thousand NSLs a year doesn't sound judicious to me. And 30,000 NSLs a year shouldn't sound judicious to the citizens of Oregon.

The reporting on NSLs cries out for proper congressional oversight to ensure that abuse of NSL powers does not occur. For starters, Americans must be armed with the necessary tools to challenge unreasonable National Security Letters. But the conference report further inhibits the ability of Americans to challenge NSLs.

More specifically, the conference report requires an NSL recipient who consults with an attorney to give the name of the attorney to the FBI. Talk about a chilling effect on the right to counsel! I am not aware of a provision like this existing in any other area of law.

For instance, the conference report imposes criminal penalties on an NSL recipient who speaks out in violation of an NSL gag order. So even if the NSL recipient believes that the letter is unconstitutional and that his rights have been violated, he could go to jail for 5 years.

It is provisions in the conference report like these, which expand the federal government's powers and make it more difficult for ordinary Americans and Congress to challenge abuses of that power, that give me serious pause. And there are not just one or two of them. Look in the sections concerning requests for business and library records, roving wiretaps, sneak and peak searches, and of course NSLs: there is a recurring pattern here and it is very disturbing.

There are those who claim that there have been no abuses of the PATRIOT Act. With all due respect, that is, at best, disingenuous. At least two courts

have held that the FBI used its NSL power in an unconstitutional manner.

And remember, we are talking about powers that include gag rules—so how many others are out there challenging PATRIOT Act activities in silence?

There are those who will say, "I haven't done anything wrong and I have no problem with the government doing what needs to be done to fight terror—if they end up with my personal information, but don't use it against me, so be it."

I wonder how that innocent person would feel if the FBI were watching over his shoulder as he surfed the Internet, standing by his side and noting whom he calls and when, or standing next to him at the cash register as he pays for a anniversary gift for his wife. Because I'll bet he wouldn't be ok with this. And while technology has made surveillance less obvious, this is exactly what some of the more controversial PATRIOT Act powers allow the government to do with only the vaguest of reasons and little or no oversight.

The obligation to demonstrate that the government is not abusing an individual's rights should not be on the shoulders of that individual. That burden should be squarely on the government's shoulders. The 9-11 Commission endorsed this notion, recommending that "the burden of proof for retaining a particular governmental power should be on the executive . . . ."

With respect to the overall bill, in our part of the world we are terribly concerned about what is going on with methamphetamine. Senator SMITH and I have worked very closely on a bipartisan basis with our colleagues to get a good anti-meth program. The administration comes along at the 11th hour and politicizes this meth issue at a time when we could pass it with a 100-0 vote.

As a cosponsor of the Combat Meth Act, I intend to continue to fight for the passage of the meth bill but not as a part of this badly flawed legislation. And while my decision was made more difficult by the fact that legislation addressing the meth crisis was included in the conference report, I will be opposing the conference report and opposing cloture.

I want it understood I am anxious to work with my colleagues on a bipartisan basis, but given this particular climate and the need to constantly keep the teeter-totter balance—fighting terrorism aggressively, protecting the civil liberties of our country—it seems to me we have to be very judicious with respect to how tools such as the national security letter are being used. Any way you cut it, my colleagues, I don't see that taking place.

So more time is needed to make the necessary corrections to the conference report to ensure that the PATRIOT Act Reauthorization promotes Americans' security and protects their rights and freedoms. The Senate should not be coerced into accepting a piece of legisla-

tion that allows the Federal Government to reach, unchecked, further into the personal life of every American, with fewer means of appeal and less oversight.

I therefore urge my colleagues to support the proposal submitted by Senator LEAHY and Senator SUNUNU extending the expiring provisions of the PATRIOT Act for 3 months. I ask unanimous consent that my statement be printed in the RECORD.

I yield the floor.

**THE PRESIDING OFFICER.** The Senator from Pennsylvania.

**MR. SPECTER.** Mr. President, without getting into methamphetamine, where we have accommodated the interests of the Senator from Oregon and other Senators by putting them on this bill because it is a measure which ought to proceed, let me ask the Senator from Oregon, when he complains about the national security letters, I ask whether the conference report is not a big step over existing law? National security letters have been in existence for decades.

**MR. WYDEN.** National security letters—

**MR. SPECTER.** Mr. President, I have the floor. I have not propounded the question yet.

National security letters have been in existence for decades. While we take up the PATRIOT Act, we have used this occasion to add protections so that whereas today they are secret, we have explicitly provided the right to consult with a lawyer. I don't disagree there ought to be that right without providing it explicitly. Somebody ought to be able to go to a lawyer, but if they get a national security letter today, they are betwixt and between.

Originally, this legislation had a requirement you had to tell the FBI who the lawyer was. The FBI wanted that provision because there are some lawyers who have been alleged to be involved in collusion with the terrorist organizations. As I said earlier, Senator LEAHY objected to that and I agreed that you ought to be able to hire your own lawyer. If the FBI asks, okay, it is a fair request and you can tell them.

Then we provided you can quash those national security letters if they are unreasonable. If you go to a judge and you say, this is unreasonable, now the standard of reasonableness is all over the law, what a reasonable man would do. Is that too high of a bar? There is judicial review.

You come to the point of disclosure where you have the issue as to whether disclosure will impede the investigation. All through the law, there are limitations on disclosure where there is a legitimate law enforcement concern about not impeding an investigation. The determination as to whether you have a national security issue or are impeding diplomatic relations is a pretty touchy subject. We passed a Senate bill with a provision that on national security letters—until now there has been no challenge possible at all.

We put statutory challenges in our Senate bill, and renewing a nondisclosure requirement, the certification by the Government—anybody in the Government, no delineation as to who—“that disclosure may endanger the national security of the U.S. or interfere with diplomatic relations shall be treated as conclusive unless the court finds the certification was made in bad faith.” That is a pretty tough standard. But that was the Senate bill. Then in the conference report, we kept it. The Senator from Oregon was one of 100 Senators who did not object to the PATRIOT Act being passed by unanimous consent. But in the conference report we said let’s do a little more here. Before you have a certification, let’s make sure it is somebody who has a lot of responsibility—the attorney general, Director of the FBI, deputy attorney general, et cetera.

My question to the Senator from Oregon is this: Aren’t those at least somewhat meritorious in protecting civil liberties? Should we have gotten in conference—in a tough conference where Chairman SENSENBRENNER, head of the House Judiciary Committee, went the extra mile—should this bill go down? Should this bill be filibustered because of that provision?

Mr. WYDEN. As my friend knows, I think virtually everything the Senator from Pennsylvania does is meritorious. I am troubled, though, about where we are with the national security letters. Yes, they existed for years, but they were greatly expanded with the PATRIOT Act. We know that. I am also concerned as we consider this kind of legal language that there will be a chilling effect on the exercise of the right to counsel, and I get that again without being able to go into the details because of my examination of the issue. I am not going to debate the Senator’s good-faith efforts; they have always been to try to strike a balance. But I am concerned that something that even the Government—the executive branch admits this is a tool that should be used carefully, at a time, as I said, when you open the morning newspaper and every day you see another effort to not strike this balance. I think we ought to stay at this national security letter issue and deal with concerns raised here with respect to secrecy and exercise of right to counsel.

My good friend from Pennsylvania and I have worked together on so many issues, and I want him to know of my desire to do it and my respect for his ability to get into some of these technical questions in a fashion that is almost unparalleled.

Mr. SPECTER. I want to call my colleagues’ attention to the fact that we received a letter from nine Senators yesterday who are opposed to the PATRIOT Act. We have a detailed reply which is now being circulated. Again, I ask my colleagues to deal with the specifics. Anybody who has any concerns about any specific provisions, come to

the floor and we are prepared to discuss them and see if we can satisfy those concerns. Beyond that, I will inform our colleagues as to what this bill is all about so there will be as much information as possible before the vote.

I yield the floor.

The PRESIDING OFFICER. Who yields time?

Mr. LEAHY. Mr. President, I ask how much time remains for the distinguished Senator from Pennsylvania and how much time does the Senator from Vermont have following the discussion the Senators from Pennsylvania and Oregon had?

The PRESIDING OFFICER. The Senator from Vermont has 24 minutes; the Senator from Pennsylvania has 28 minutes.

Mr. LEAHY. I suggest the absence of a quorum with the time charged equally to both sides.

Mr. SPECTER. I object. I don’t want any time lost on the quorum call.

Mr. LEAHY. I withdraw that request and I yield the floor.

Mr. SPECTER. Mr. President, we don’t have a whole lot of time to debate this bill. The Senator from Vermont is right. He and I are due at a meeting on asbestos. The Senator and I are due on many important meetings. I invite anybody who has a question or a doubt about this bill to come to the floor and raise their concerns. If not, I will join my colleague in suggesting the absence of a quorum so we can step across the hall to a meeting.

Mr. LEAHY. Mr. President, I see the Senator from Colorado on the floor. I understand he wishes to speak on this. I ask the Senator how much time would he require?

Mr. SALAZAR. Approximately 10 minutes.

Mr. LEAHY. I yield 10 minutes to the Senator from Colorado.

The PRESIDING OFFICER. The Senator from Colorado is recognized.

Mr. SALAZAR. Mr. President, I rise today to discuss the PATRIOT Act conference report currently before the Senate.

I start by beginning to make absolutely clear my commitment to law enforcement and our fight against terrorism. I served as Attorney General for the State of Colorado for 6 years, and I am intimately familiar with the specific needs of law enforcement in the fight against terrorism and with the paramount importance of police work in this area. The peace officer’s badge I carried with me was a constant reminder of the dedication, performance, and sacrifice that our men and women in law enforcement make every day as they work to keep us safe. At the end of the day, we will keep America safe when the 800,000 men and women who work in local, Federal, and State law enforcement are able to do their jobs and have the tools with which to do their jobs.

Accordingly, I wholeheartedly support extending all of the law enforcement powers provided by the USA PA-

TRIOT Act. On September 11, 2001, the magnitude of the terrorist threat was something that galvanized the Nation, and it is imperative that we give law enforcement officers the tools they need to investigate and prosecute terrorists within our borders so that we never face another attack like the ones we saw 4 years ago.

While I strongly support measures that allow for the greater information sharing, it is worth noting that as the 9/11 Commission determined, even without the powers of the PATRIOT Act it was well within the reach of law enforcement to prevent the September 11 terrorist attacks. We knew al-Qaeda was operating within our borders. We knew suspected terrorists were in flight schools in America learning how to fly planes. As the Presidential Daily Brief of August 2001 clearly showed, we knew of the possibility that Osama bin Laden was determined to strike our Nation with airplanes.

We had the information to prevent those attacks. Yet we failed to protect the homeland. As my colleagues know, the key goal of the PATRIOT Act was to lower the “wall” between our law enforcement and intelligence agencies that too often prevented the necessary sharing of information among them. That wall is real and existing; it is a legal wall and a cultural wall that is present even today. That wall was recently alluded to in the report card by the 9/11 Commission. That wall exists because in our history of intelligence gathering, every agency has operated within its own silo.

There was very ineffective information sharing about the bad guys laterally across the Federal Government agencies. That wall also exists with the failure to share information between the Federal Government and State and local law enforcement.

We must do more to break down that wall as we move to a more coherent and integrated approach to go after the bad guys. To the extent the conference report before us breaks down that wall of communication and continues to provide the tools to law enforcement to fight the war on terror, its provisions are positive, and I support them.

In addition, there are a number of other provisions in the conference report that are not related to the PATRIOT Act that are also deserving of the support of the Senate. For example, it contains provisions of the Combat Meth Act which I helped introduce at the beginning of this session. This legislation would place restrictions on the sale of products that contain the primary ingredients in methamphetamine to make it harder for criminals to produce the drug in the first place. The conference report also contains provisions to strengthen port security and combat terrorist financing.

Without question, the legislation before us contains provisions that are worthy of support, but I am disappointed about the bill’s failure to adequately protect the civil liberties of Americans.

Today, December 15, 2005, marks the 214th anniversary of the ratification of the Bill of Rights in 1791. Among the freedoms enshrined in the Constitution is the fourth amendment's guarantee that the right of the people to be secure in their persons, houses, papers, and effects against unreasonable searches and seizures shall not be violated. Let me state that again because that is what is at stake in this debate. The right of the people to be secure in their persons, houses, papers, and effects against unreasonable searches and seizures shall not be violated.

It is ironic that we are now considering passing legislation that would greatly undermine that principle. Instead, we should take this occasion to reflect on the importance of the liberties guaranteed to all of us by that document and to understand that we can give law enforcement officers the tools they need to fight terrorists without sacrificing our constitutional rights and freedoms.

I have worked very hard with my colleagues to achieve that goal. Earlier this year, I joined with five colleagues from both sides of the aisle in introducing the SAFE Act. I am proud of the leadership and courage shown by Senators CRAIG, DURBIN, SUNUNU, FEINGOLD, and MURKOWSKI. That legislation, the SAFE Act, would have extended all of the expiring sections of the PATRIOT Act. It would also have placed reasonable limitations on the way those powers are used to protect America's fundamental freedoms.

As the Senate began its work on the process of reauthorizing the PATRIOT Act, I continued to work closely with the SAFE Act sponsors to incorporate our commonsense proposal into the Senate reauthorization bill. Although the legislation reported out of the Senate Judiciary and Intelligence Committees was not perfect, it took important steps to protect the freedom of innocent Americans and passed the full Senate with unanimous support from among the Republican, Democratic, and Independent membership of this body.

That is why my colleagues and I fought so hard to see that the conference committee remained true to the Senate-passed bill. Unfortunately, when the details of the draft conference report were released in the week before Thanksgiving, it became clear that the conferees had retreated from the modest civil liberties protections included in the Senate bill.

My colleagues and I renewed our request that the civil liberties concerns be addressed. We did not ask for all the provisions of the SAFE Act. We did not even ask for all the provisions in the Senate legislation. Although we could have easily put this issue behind us now if the House had taken up and passed the bill we unanimously adopted in this Chamber, we simply asked the conferees to make modest changes to a handful of critical provisions. Yet those changes were not made.

Let me review what some of the remaining concerns are with respect to the conference report.

First, section 215. One of the most controversial provisions of the PATRIOT Act is section 215. Section 215 allows the Government to go to a secret court to obtain financial, library, medical, travel, and a whole host of other kinds of records that fall under the extremely vague definition of "any tangible thing." The conference report would also impose an automatic permanent gag order preventing the holder of those records from revealing information about the request. It would not permit the recipient to challenge the gag order.

To be clear on that point, in order to obtain a search order under section 215, all the Government has to do is to go to a secret court, the secret FISA court, and claim that the order is relevant to an ongoing terrorist investigation, an application that the court has no discretion, no authority whatsoever to reject. It simply has to do what the Government asks it to do.

The legal standard of relevance is extremely low. "Relevant evidence" is a very low threshold that can provide no protection to the civil liberties we are trying to protect.

In contrast, the Senate bill would have restored a clear and specific standard of individualized suspicion, meaning that the Government would have to show that the records in question are linked to a suspected terrorist or an agent of a foreign power. In addition, the Senate bill would give the recipient of a FISA order the right to challenge the gag order and to receive meaningful judicial review of that order.

The PRESIDING OFFICER. The Senator's time has expired.

Mr. SALAZAR. Mr. President, I ask unanimous consent for another 3 minutes.

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

Mr. SALAZAR. Mr. President, another controversial provision of the PATRIOT Act is section 505, which authorizes the use of national security letters. National security letters are requests for certain specific categories of information, including financial records, business dealings, and telephone and e-mail records.

Under the conference report, NSLs can be issued without the prior approval of a judge and can be authorized by any of several dozen FBI field offices. The Washington Post recently reported that the Government now issues 30,000 NSLs a year—100 times more than historic norms. I respect and honor my friends and the leadership in the Federal Bureau of Investigation with whom I have worked for many years, but when we start issuing 30,000 NSLs a year, we ought to make sure there is some oversight with respect to how those NSLs are issued.

As with section 215, the conference report does not allow meaningful judi-

cial review of an NSL's gag order. Because the Government does not need a judge's approval to send an NSL, meaningful judicial review of a gag order is a critical safeguard and is simply missing in the conference report.

I wish to finally spend just a second speaking about the sneak-and-peek searches under section 213. My colleagues and I expressed concern about the sneak-and-peek searches where the target of the search is not identified or notified for a period of several days or even weeks.

Prior to the enactment of the PATRIOT Act, law enforcement could delay notification of a search warrant in certain limited cases. The PATRIOT Act significantly lowered the standard for delayed notification, allowing sneak-and-peek searches in any case where "immediate notification of the warrant may have an adverse result." The conference report before us is not much better, as it allows the Government to wait up to 30 days to notify the target of a property search.

I believe we can do better, and I believe the proposal which has been introduced on a bipartisan basis to allow us an additional 90 days to try to work through some of these issues on the PATRIOT Act could, in fact, result in the kind of PATRIOT Act that receives a unanimous vote of the Senate.

In my own State, liberal and conservative newspapers have said that this Senate has an obligation to protect the constitutional liberties of Americans.

The PRESIDING OFFICER. The Senator's time has expired.

Mr. SALAZAR. I ask unanimous consent for 30 additional seconds.

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

Mr. SALAZAR. The Rocky Mountain News said last month that we in the Senate should hang tough because fundamental freedoms of America are at stake.

The Colorado Springs Gazette, a very conservative newspaper, said those insisting on added protections for civil liberties and stricter sunset provisions are doing the right thing by holding their ground.

The Denver Post editorial said: We support a bipartisan effort to block final passage unless safeguards are reinstated.

I believe the Senate can do better in helping us move forward in the fight against terror, giving law enforcement the tools they need in that ongoing battle, and at the same time assuring that we are protecting the cherished freedoms of our democracy enshrined in our Constitution and the Bill of Rights.

I yield the floor.

The PRESIDING OFFICER. The Senator from Pennsylvania.

Mr. SPECTER. Mr. President, with all due respect, I think we do not need any newspaper editorials to tell the Senate to hang tough or to tell Senators to hang tough or to tell this Senator to hang tough. I think we have hung tough, mighty tough.

Let me take up the specifics about what the Senator from Colorado has had to say.

Mr. FEINGOLD. Mr. President, we have many speakers on our side, and I just want to be clear that this time is charged to the Senator from Pennsylvania.

The PRESIDING OFFICER. The Senator is in control of the time.

Mr. SPECTER. There is no doubt about that. I sought recognition, and it is on my time. There is no doubt about that at all.

Mr. FEINGOLD. I just wanted to clarify that.

Mr. SPECTER. The interruption of the Senator from Wisconsin can be charged on his time.

As to section 215, the Senator from Colorado is wrong. The conference report provides that there may be a “challenge to the legality of the order by filing a petition with the FISA court,” and that petition can take up the gag order.

When he talks about the standards, there are the three criteria from the Senate bill, but there is an additional provision that the judge, judicial review on a terrorism investigation which has been authorized by going through quite a number of hurdles, those records are important for a terrorism investigation. If the Senator is talking about library records, it has to be the Director of the FBI or the Assistant Director, or the number-three man. They cannot be delegated. So there are really safeguards and protections for civil liberties in this bill. We hung tough and we got them.

When the Senator from Colorado talks about the conference report on delayed notice, so-called sneak and peak, not much better, I will let my colleagues evaluate whether the Senator from Colorado is right or the Senator from Pennsylvania is right. Currently, under the PATRIOT Act, the only limitation is a reasonable period of time, which can be anything. The Senate bill came in at 7 days. The House bill came in at 180 days. The Fourth Circuit has said that 45 days is a reasonable period of time.

Bear in mind that these delayed notice warrants are not issued unless the impartial judicial official standing between the citizen and the law enforcement officer, the judicial official, is satisfied that there ought to be a delay. If there is a customary search-and-seizure warrant which goes out, the target knows they have been served, but these are surreptitious. These are secret. There has to be a showing that the investigation will be harmed. When we put in 7 days, we were not unaware that there would be negotiations and that the House came in at 180 days. I think we had a pretty good result from the Senate's point of view to concede 23 days and the House conceded 150 days.

So if the Senator from Colorado thinks that is “not much better,” I will rely on my colleagues to decide

whether the Senate bill is not a whole lot better as a result of what we did.

When he talks about the national security letters, I made this point several times on the floor, but perhaps the Senator from Colorado has not heard it because he continues to assert the Washington Post story. There have been briefings available, as I said earlier, and the Senator from Colorado can get one from the Department of Justice, that 30,000 figure is wrong. I cannot say what it is because it is classified, and I have asked the Department of Justice to make it an unclassified disclosure, which they have not done so far. I ask the Senator from Colorado, and I ask all of my colleagues, not to vote on this bill based on what they read in the Washington Post. If they have some concerns, come to the floor and we will find time to listen to their concerns and we will see if we can satisfy them, and certainly in that process inform other Senators as to what this bill is all about.

I think we have come to grips with the concerns which the Senator from Colorado has articulated.

Mr. SALAZAR. Mr. President—

Mr. SPECTER. I have the floor, Mr. President—on the national security letters. We have put in safeguards. The national security letter can be quashed if it is unreasonable. The conference report has set the Senate standard for the conclusive presumption, and I think we have been cognizant of civil rights.

I take second place to no one—I know the Senator from Colorado's record as an attorney general and a protector of civil rights, and I have great respect for it, but I take second place to no one in my tenure in the Senate on protecting civil rights, and I think this bill does that.

I yield the floor.

The PRESIDING OFFICER. The Senator from Colorado.

Mr. SALAZAR. Mr. President, a point of inquiry: May I respond to the Senator from Pennsylvania on his time for 30 seconds?

Mr. SPECTER. No, the Senator may not respond on my time.

The PRESIDING OFFICER. The Senator from Pennsylvania does not yield.

Mr. SPECTER. Thirty seconds?

The PRESIDING OFFICER. Thirty seconds.

Mr. SPECTER. Go ahead, on my time.

The PRESIDING OFFICER. The Senator from Colorado.

Mr. SALAZAR. Mr. President, first and foremost, I want to say that I have the utmost respect for the Senator from Pennsylvania as a leader and mentor of all of us. Second, I disagree with his conclusions with respect to the protections for civil liberties because when there is a secret court and the leadership of the FBI essentially in charge of giving those protections to these kinds of provisions in the PATRIOT Act, it is not going to the point where we need to go to protect our civil liberties.

I yield the floor and I thank my good friend and colleague from Pennsylvania.

Mr. SPECTER. One more point before I yield to the Senator from Arizona. It is a secret court because they are discussing national security matters. National security matters are always classified. We are briefed in Senate 407 all the time. We go to a secret room where there are classified materials. There is nothing unusual about that.

I yield 10 minutes to the Senator from Arizona.

The PRESIDING OFFICER. The Senator from Arizona.

Mr. KYL. Mr. President, I do want to agree with one thing my colleague from Colorado said just a moment ago. He said the fundamental freedoms of Americans are at stake. I agree with that. But they are not threatened by the U.S. Government. They are threatened by foreign terrorists who struck us on September 11 and who have continued to threaten us since that time.

There was much criticism of our Government as a result of our failure to prevent that attack on September 11, particularly when the 9/11 Commission reported that there were some things that could have been done that just might at least theoretically have prevented that attack. We quickly acted in the Congress to put in place the legal mechanisms to enable our law enforcement and intelligence people to begin protecting the American people. What we found was that there were a lot of loopholes in our laws that needed to be filled in order to give our law enforcement and intelligence people the weapons, the tools, the support that they needed to protect us.

We did that with the PATRIOT Act. However, because of concerns that possibly some of these authorities could be abused, we said we are going to sunset them so that we have to come back and reconsider what we did, and that is what we are all about here now.

As a result of significant debate in this body and in the other body, we each passed different versions of a re-authorization of the PATRIOT Act, and since then accommodated those differences in what is called a conference committee. We are now considering that compromise between the House and Senate versions in a compromised conference committee report. Those of us who helped to write the original PATRIOT Act and were very anxious to get these authorities in place believe that in some respects we have gone too far. We have leaned over too far backward to those who are so afraid that somehow somebody's freedom might be stepped on in this country, that they have not enabled us to fight the terrorists that are the real enemy. They have not given us the tools we need. But in order to get the conference committee resolved and get the bill on the floor here, we agreed to sign the report and have this debate.

Now we find there are people on the other side who insist on having it all

their way. Every single thing they want has to occur or else they are going to filibuster the bill. What does that mean? It means they are going to talk it to death, refuse to allow us to have a final vote on it, with the result that the PATRIOT Act is gone on December 31.

They say: We will agree to extend it for a little while. That is no answer. We have a process. We have gone through the process. It has been very difficult. It has been long. It has been hard. We have gotten a product that is the result of compromise. That is the way we work in the Senate and in the House and in this country, and that compromise has to be voted on, yes or no. If you don't like it, then vote no.

Here is what I suggest. We are at war. We have to be responsible and serious about what we do. I will say it right now, if the filibuster results in this act ceasing to exist, if there is no more PATRIOT Act next year and an attack occurs in this country and it could have been prevented by the provisions of the PATRIOT Act, then everyone who votes to support a filibuster will have to answer for that attack.

There were some things we could have done in the past. I would like to refer to what they are because, from the 9/11 Commission, we know that some of the things we put in the PATRIOT Act might prevent an attack in the future, some of the very things that are being criticized by those who are suggesting they might filibuster. Let me give just a little bit of the detail.

We now know that one of the things that stood in the way of a successful investigation was the previous law gaps in our terrorism law that prevented the FBI from doing certain things—in particular, to exploit leads that related to al-Qaeda.

We came tantalizingly close to substantially disrupting or even stopping this terrorist plot. The investigation to which I refer involved a person by the name of Khalid Al Mihdhar. He was one of the eventual suicide hijackers of American Airlines flight 77, which crashed into the Pentagon, killing 58 passengers and crew and 125 people on the ground. An account of the pre-September 11 investigation of Mihdhar is provided in the 9/11 Commission's staff statement No. 10. Here is what that statement says:

During the summer of 2001 a CIA agent asked an FBI official \*\*\* to review all of the materials from an Al Qaeda meeting in Kuala Lumpur, Malaysia one more time. \*\*\* The FBI official began her work on July 24, of 2001. That day she found the cable reporting that Khalid Al Mihdhar had a visa to the United States. A week later she found the cable reporting that Mihdhar's visa application—what was later discovered to be his first application—listed New York as his destination. \*\*\* The FBI official grasped the significance of this information.

The FBI official and an FBI analyst working the case promptly met with an INS representative at FBI Headquarters. On August 22 INS told them that Mihdhar had entered the United States on January 15, 2000, and

again on July 4, 2001. \*\*\* The FBI agents decided that if Mihdhar was in the United States, he should be found.

At this point, the investigation of Khalid Al Mihdhar came up against the infamous legal "wall" that separated criminal and intelligence investigations at the time. That is a wall, by the way, which will be re-erected if this filibuster succeeds and the PATRIOT Act falls. That wall, everyone agrees, had to come down. The Joint Inquiry Report of the House and Senate Intelligence Committees describes what happened next:

Even in late August 2001, when the CIA told the FBI, State, INS, and Customs that Khalid al-Mihdhar, Nawaf al-Hazmi, and two other "Bin Laden-related individuals" were in the United States, FBI Headquarters refused to accede to the New York field office recommendation that a criminal investigation be opened, which might allow greater resources to be dedicated to the search for the future hijackers. \*\*\* FBI attorneys took the position that criminal investigators "cannot" be involved and that criminal information discovered in the intelligence case would be "passed over the wall" according to proper procedures. An agent in the FBI's New York field office responded by e-mail, saying: "Whatever has happened to this, someday someone will die and, wall or not, the public will not understand why we were not more effective in throwing every resource we had at certain problems."

You would think we would have learned the lesson of 9/11. If the filibuster succeeds, those who vote for the filibuster will be voting to allow this wall to be reerected. The very wall that we tore down with the PATRIOT Act so the FBI and CIA could talk to each other, the very wall that might have, had we torn it down before 9/11—that wall might have prevented us from discovering two of the key people involved in 9/11, and had we stopped them from getting on the airplane, we might have stopped at least one of the attacks of 9/11.

Whatever has happened to this, someday, someone will die, and wall or not, the public will not understand why we were not more effective in throwing every resource we had at certain problems.

Unfortunately, this grim prediction turned out to be true; almost 3,000 people died.

We then acted to make sure it would never happen again. Now there are people threatening to filibuster the PATRIOT Act, which will go out of existence on December 31 if the filibuster succeeds, and people will wonder how it is that this wall was resurrected after the experience we had.

Here is what the 9/11 Commission said about the effect of the wall between the criminal and intelligence investigations with respect to the investigation of Khalid al Mihdhar:

Many witnesses have suggested that even if Mihdhar had been found, there was nothing the agents could have done except to follow him onto the planes. We believe this is incorrect. Both Hazmi and Mihdhar have been held for immigration violations or as material witnesses in the Cole bombing case. Investigation or interrogation of these individuals, and their travel and financial activi-

ties, also may have yielded evidence of connections to other participants in the 9/11 plot. In any case, the opportunity did not arise.

As we know, Mr. President, the PATRIOT Act dismantled this legal wall between intelligence and criminal investigations. It was enacted too late to prevent 9/11, but it will prevent future acts of terrorism unless we allow it to expire.

I would like to talk about another key investigation prior to September 11. I will probably have to get just about 5 more minutes of time. Before I do, let me make just this one point about those who say we do not have to let it expire, we could just extend it for another 3 months or so.

Why do they say that? Because they think they can get some more concessions. The House of Representatives is done making concessions, and I agree with them. I would say the concessions already made could go too far, could hamper our law enforcement capability of catching terrorists or infiltrating their organizations or finding evidence to implicate them in crimes. Nonetheless, that time is passed. There is no more conference committee to go back to. We have reached all of the compromises, and not everybody can get everything they want. I certainly have not gotten everything I want. But I understand that at a certain point, the people of the United States have to pull together and act in a unified way to ensure that we have a law in place that will help us fight this war on terrorism.

I think it is extraordinarily selfish to say we have to have our way or no way, let the Act expire. Oh, we will maybe let it go for another 3 months. What kind of uncertainty does that create? Three months, using one set of procedures and not knowing what the law is going to be.

The PRESIDING OFFICER. The time of the Senator has expired.

Mr. KYL. I ask the Senator from Pennsylvania how much more time he can yield me?

Mr. SPECTER. We have only 10 minutes left. Senator CORNYN wants to speak. I need to engage Senator CRAIG in a dialog.

Mr. KYL. I will not ask for any more time, then, except to say at a later time I will tell the story of Zacarias Moussaoui and how the PATRIOT Act helps to resolve the situation we couldn't resolve with Zacarias Moussaoui, either, and had we done that, he may not have been involved in the 9/11 activities.

The PRESIDING OFFICER. Who yields time?

Mr. LEAHY. How much time do I have remaining, Mr. President?

The PRESIDING OFFICER. The Senator from Vermont has 8 minutes 22 seconds. The Senator from Pennsylvania has 9½ minutes.

Mr. LEAHY. I yield my remaining time to the Senator from Idaho.

Mr. CRAIG. I thank my colleague from Vermont for yielding. I am glad I

have been able to follow my colleague, my friend and associate from Arizona, and to say to him: Senator, you are wrong.

You are just flat wrong—that this Senate or this Congress is going to allow the PATRIOT Act to expire.

I find it fascinating, if not almost humorous, that I am on the floor defending the position of JON KYL and my chairman, ARLEN SPECTER, who brought a bill to the floor which brought unanimity to the Senate; that they accepted, that the House rejected, in part; and that they are now saying we should not revisit it again. It is a phenomenally unique responsibility.

Folks, when we are dealing with civil liberties, you don't compromise them, and you don't let the bad guys win.

The Senate of the United States and the Congress and this President will not let the bad guys win. But we are sure not going to compromise civil liberties.

How do you do it? The check and balance that has always been within the law is what we strive for today.

When I began to become involved in the PATRIOT Act, looking at its reauthorization, I knew it would be an uphill battle. I knew it would be an uphill battle because Americans have grown to be frightened. But now they have grown to be emboldened when they recognized that some of their freedoms were and are at risk.

I began to work, as did some of my colleagues. And out of that, knowing it must be reauthorized, we produced a piece of legislation.

I must say Chairman SPECTER took us seriously. I am pleased he did. The Judiciary Committee took us seriously. I am glad they did. Out of that commitment came a work product of which all of us were very proud. And it passed the Senate unanimously.

I think those charges are simply untrue, that somehow we wanted to destroy the act or that we wanted it to expire and go away. I know the rest of the country doesn't believe us anymore in that sense because they now understand the importance of the balance we are striving to create.

I also find it very unique that we are talking about and focusing on a very small part of the PATRIOT Act itself. It is not sweeping change we are proposing. It is not sweeping change we hope to achieve by opposing cloture and asking the House to reconsider the work we have done. Is it an impossible task and is it a leap too far? Not at all.

Look at the House vote yesterday. Two hundred and twenty four voted for the conference report we are now considering. That isn't the important vote, fellow Senators. The important vote was the 202 who agreed that we ought to agree with the Senate on what they had accomplished. That is simply 13 short of a majority in the House. Rarely—and we know that, those of us who have been around a while—do you ever get the House to agree with the Senate as much as the House agrees with the Senate on this issue.

I am very confident, if the Senate revision of the PATRIOT Act and the reauthorization provision we provided, which passed the Senate unanimously, had been on the floor of the House yesterday and that had been the document being voted on, the vote would not have been 224; it would have been 240 or 250 or possibly 300. It is very possible that they would have been able to achieve that kind of broader support. Why? For all of my colleagues who have joined the debate today, and this is why I think the issues we are talking about are so important.

If we had wanted to kill the PATRIOT Act, we would not have gone as far as we have to work with the chairman and the ranking member of the Judiciary Committee to fine-tune it and to make sure those safeguards are in place.

Americans clearly understand we are at war. That does not need to be restated on the floor of this Senate. Blood has been spilled on our soil, and we know that.

We recognize the very important task at hand, and the authority we have given our security organizations and our intelligence and law enforcement organizations in this area.

But it is incumbent upon me, and it is incumbent upon all of us, to make sure that we don't gray or in some way make it easier for free citizens to have their rights violated, either by accident or if by a rogue investigator who found he or she could use the privilege granted here to somehow leverage a situation of a free citizen. And that is not what we are about.

There is so much to be said here, and my time is very limited.

I ask unanimous consent that the "Dear Colleague" letter that many of us sent out yesterday to our colleagues that breaks down part by part what we have done be printed in the RECORD.

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

U.S. SENATE,

Washington, DC, December 14, 2005.

DEAR COLLEAGUE: Prior to the Thanksgiving recess, several Senators expressed strong opposition to the draft Patriot Act reauthorization conference report that was circulated by the conferees. We were gratified that Congress did not attempt to rush through a flawed conference report at that time, and we hoped the conferees would make significant improvements to the conference report before we returned to session this month.

We write to express our grave disappointment that the conference committee has made so few changes to the conference report since then. And now, in the last week of the session, the Senate is being asked to reauthorize the Patriot Act without adequate opportunity for debate. If the conference report comes to the Senate in the same form that it was filed in the House last week, we will oppose cloture on the conference report. We urge you to do the same.

As you know, the Senate version of the bill, passed by unanimous consent in July, was itself a compromise that resulted from intense negotiations by Senators from all sides of the partisan and ideological divides.

That bill did not contain many Patriot Act reforms that we support, but it took important steps to protect the freedoms of innocent Americans while also ensuring that the government has the power it needs to investigate potential terrorists and terrorist activity. Although the conference report contains some positive provisions, it unfortunately still retreats too far from the bipartisan consensus reached in the Senate. It fails to make some vitally important reforms and in some areas actually makes the law worse.

Last week, Chairman Specter circulated a Dear Colleague suggesting the conference report as drafted addresses the concerns raised about potential civil liberties abuses. We credit Chairman Specter for improving the conference report. However, the most important substantive reforms from the Senate bill were excluded from the conference report. The original cosponsors of the SAFE Act (Senators CRAIG, DURBIN, SUNUNU, FEINGOLD, MURKOWSKI, SALAZAR) identified several items before Thanksgiving as problematic and indicated they would not support the conference report unless additional changes were made in those areas. Those issues were not adequately addressed. They include the following:

The conference report would allow the government to obtain library, medical and gun records and other sensitive personal information under Section 215 of the Patriot Act on a mere showing that those records are relevant to an authorized intelligence investigation. As business groups like the U.S. Chamber of Commerce have argued, this would allow government fishing expeditions targeting innocent Americans. We believe the government should be required to convince a judge that the records they are seeking have some connection to a suspected terrorist or spy, as the three-part standard in the Senate bill would mandate.

Some conferees argue that the language in the conference report would permit the government to use the "relevance" standard only in limited, extraordinary circumstances, and that the Senate bill's three-part standard would continue to apply in most circumstances. To the contrary, the conference report never requires the government to demonstrate that the individual whose records are sought is connected to a terrorist or spy; rather, it permits the "relevance" standard to be used in every case.

It has also been asserted that the government should not be required to abide by the three-part Senate standard because the Department of Justice demonstrated in a classified setting that "circumstances may exist in which an individual may not be known to a foreign power or be a recognized terrorist but may nevertheless be crucial to an authorized terrorism investigation." We are convinced, however, that the three-part standard provides the necessary flexibility in such circumstances. Indeed, the government need only show that the records they seek are relevant to the activities of a suspected terrorist or spy, a very low burden to meet, but one that will protect innocent Americans from unnecessary surveillance and ensure that government scrutiny is based on individualized suspicion, a fundamental principle of our legal system.

Unlike the Senate bill, the conference report does not permit the recipient of a Section 215 order to challenge its automatic, permanent gag order. Courts have held that similar restrictions violate the First Amendment. While some have asserted that the FISA court's review of a government application for a Section 215 order is equivalent to judicial review of the accompanying gag order, the FISA court is not permitted to make an individualized decision about

whether to impose a gag order when it issues a Section 215 order. It is required by statute to include a gag order in every Section 215 order; the gag order is automatic and permanent in every case. The recipient of a Section 215 order is entitled to, but does not receive, meaningful judicial review of the gag order.

The conference report does not sunset the National Security Letter (NSL) authority. In light of recent revelations about possible abuses of NSLs, which were reported after the Senate passed its reauthorization bill, the NSL provision should sunset no more than four years so that Congress will have an opportunity to review the use of this power.

The conference report does not permit meaningful judicial review an NSL's order. It requires the court to accept as conclusive the government's assertion that a gag order should not be lifted, unless the court determines the government is acting in bad faith. As a result, the judicial review provisions do not create a meaningful right to review that comports with due process.

The conference report does not retain the Senate protections for "sneak and peek" search warrants, as Chairman Specter's letter suggests. The conference report requires the government to notify the target of a "sneak and peek" search within 30 days after the search, rather than within seven days as the Senate bill provides and as pre-Patriot Act judicial decisions required. That seven-day period was the safeguard included in the Senate sneak and peek provision. The conference should include a presumption that notice will be provided within a significantly shorter period in order to better protect Fourth Amendment rights. The availability of additional 90-day extensions means that a shorter initial time frame will ensure timely judicial oversight of this highly intrusive technique but not create undue hardship on the government.

While the issues discussed above are the core concerns about the conference report that the original cosponsors SAFE Act asked to be modified, they are not the only problems that we see with the conference report. There are a number of other areas where we believe the conference report falls short.

#### "LIBRARY RECORDS" PROVISION (SECTION 215)

Unlike the Senate bill, the conference report requires a person who receives a Section 215 order to notify the FBI if he consults with an attorney and to identify the attorney to the FBI. This will have a significant chilling effect on the right to counsel. There is no such requirement any other area of law.

The conference report would give the government unilateral authority to keep all its evidence secret from a recipient who is challenging a 215 order, regardless of whether the evidence is classified. This will make it very difficult for the recipient of a Section 215 order to obtain meaningful judicial review that comports with due process.

Under the conference report, the target of a Section 215 order never receives notice that the government has obtained his sensitive personal information and never has an opportunity to challenge the use of this information in a trial or other proceeding. All other FISA authorities (wiretaps, physical searches, pen registers, and trap and trace devices) require such notice and opportunity to challenge.

#### NATIONAL SECURITY LETTERS (SECTION 505)

The conference report would allow the government to issue NSLs for certain types of sensitive personal information simply by certifying that the information is sought for a terrorism or espionage investigation. This would allow government fishing expeditions targeting innocent Americans. As business

groups have argued, the government should be required to certify that the person whose records are sought has some connection to a suspected terrorist or spy.

Unlike the Senate bill, the conference report requires a person who receives an NSL to notify the FBI if he consults with an attorney and to identify the attorney to the FBI. This will have a significant chilling effect on the right to counsel. There is no such requirement in any other area of law.

Unlike the Senate bill, the conference report for the first time imposes criminal penalties on an NSL recipient who speaks out in violation of an NSL gag order, even if the NSL recipient believes his rights have been violated.

The conference report for the first time gives the government the power to go to court to enforce an NSL, effectively converting an NSL into an administrative subpoena. An NSL recipient could now potentially be held in contempt of court and subjected to serious criminal penalties. The government has not demonstrated a need for NSLs to be court enforceable and has not given any examples of individuals failing to comply with NSLs.

The conference report would give the government unilateral authority to keep all its evidence secret from a recipient is challenging an NSL, regardless of whether the evidence is classified. This will make it very difficult for an NSL recipient to obtain meaningful judicial review that comports with due process.

As with Section 215, the conference report fails to require notice to the target of an NSL if the government seeks to use the records obtained from the NSL in a subsequent proceeding, and fails to give the target an opportunity to challenge the use of those records.

#### "SNEAK AND PEEK" SEARCHES (SECTION 213)

The conference report does not eliminate the catch-all provision that allows sneak and peek searches any time that notice to a subject would "seriously jeopardize" an investigation. This exception could arguably apply in almost every case.

#### ROVING WIRETAPS (SECTION 206)

The conference report does not include meaningful checks on "John Doe" roving wiretaps, a sweeping power never authorized in any context by Congress before the Patriot Act. A John Doe roving wiretap does not identify the person or the phone to be wiretapped. Unlike the Senate bill, the conference report does not require that a roving wiretap include sufficient information to describe the specific person to be wiretapped with particularity.

The conference report does not require the government to determine whether the target of a roving intelligence wiretap is present before beginning surveillance. An ascertainment requirement, as has long applied to roving criminal wiretaps, is needed to protect innocent Americans from unnecessary surveillance, especially when a public phone or computer is wiretapped.

#### PEN REGISTERS AND TRAP AND TRACE DEVICES (SECTION 214 AND 216)

The conference report retains the Patriot Act's expansion of the pen/trap authority to electronic communications, including e-mail and Internet. In light of the vast amount of sensitive electronic information that the government can now access with pen/traps, modest safeguards should be added to the pen/trap power to protect innocent Americans, but the conference report does not do so.

#### DOMESTIC TERRORISM DEFINITION (SECTION 802)

The conference report retains the Patriot Act's overboard definition of domestic ter-

rorism, which could include acts of civil disobedience by political organizations. While civic disobedience is and should be illegal, it is not necessarily terrorism. This could have a significant chilling effect on legitimate political activity that is protected by the first Amendment.

It is not too late to remedy the problems with the conference report and pass a reauthorization package that we can all support. The House could take up and pass the bill the Senate adopted by unanimous consent in July, or, if the additional modest but critical improvements to the conference report that the original cosponsors of the SAFE Act laid out prior to Thanksgiving are made, we believe the conference report can easily and quickly pass both the House and the Senate this month.

We appreciate that since Thanksgiving, the conferees agreed to include four-year sunsets of three controversial provisions rather than seven-year sunsets. But we should not just make permanent or, in the case three provisions, extend for another four years the most controversial provisions of the Patriot Act. The sunsets this year provide our best opportunity to make the meaningful changes to the Patriot Act that the American public has demanded. Now is the time to fix these provisions.

We urge you to join us in opposing cloture on the conference report, and in supporting our call for the conferees to make additional improvements. We still have the opportunity to pass a good reauthorization bill this year. But to do so, we must stop this conference report, which falls short of the meaningful reforms that need to be made. We must ensure that when we do reauthorize the Patriot Act, we do it right. We still can—and must—make sure that our laws give law enforcement agents the tools they need while providing safeguards to protect the constitutional rights of all Americans.

Sincerely,

Larry E. Craig, John E. Sununu, Lisa Murkowski, Chuck Hagel, Barack Obama, Dick Durbin, Russ Feingold, Ken Salazar, John F. Kerry.

Mr. CRAIG. Mr. President, let me, for a moment, touch on something I think is important. This issue has spread beyond these walls and beyond this building.

The Idaho Legislature, my legislature in Idaho, by a resolution, a house joint memorial and a senate joint memorial to the Congress, asked that we support the SAFE Act. The SAFE Act was the passage of amendments that the Senate Judiciary Committee incorporated within our version of the reauthorization of the PATRIOT Act that passed this body unanimously.

From the beginning, those of us who have concerns about PATRIOT have had an uphill battle. Practically before the ink was dry on our bill—and certainly well before any committee had reviewed it—we faced a veto recommendation. Before they even read our reform proposals, some of PATRIOT's defenders charged us with wanting to repeal the law and do away with all the tools it provided law enforcement to protect our country against terrorism.

Those charges were not true when we began, and they're not true today. We are not trying to undo PATRIOT. If some Senators still believe that, well, the rest of the country does not.

Most of PATRIOT isn't even at issue today—just a small part of the law is up for renewal. Of that small part, we are only focusing on a few controversial and very important provisions. And even for those few provisions in the small part of the law up for renewal, we are asking for modest checks and balances, not repeal. And we have even been flexible about what shape those reforms should take. We introduced the SAFE Act, offering one way to “fix” what we saw as problems, but in the end, we accepted a Senate Judiciary Committee bill that took a couple of different approaches.

Here is an interesting reaction: When we are dealing with constitutional freedoms, just a little can make all the difference. Some are saying that we are asking for so little, we should just drop it altogether. Our point is that it would take very little to close the gap and provide the assurances we are seeking. Our ask is very doable. The conference on this bill was squeezed into the very end of the year; changes were being made in the conference agreement even up to the day of its filing. We believe a limited timeframe would allow further discussion and an opportunity to get beyond whatever political issues are in the way. Some of us have even introduced legislation that would extend the expiring provisions of PATRIOT for 3 months, for this purpose.

Furthermore, it's worth emphasizing that our concerns are not about insignificant or technical issues—they relate to what happens when innocent Americans come within the sphere of surveillance in antiterrorism investigations.

Regardless of what Americans think about the PATRIOT Act's effectiveness, they also care about preserving their freedom within the fight against terrorism.

Let me read the resolution passed by the Idaho State Legislature earlier this year on the subject:

A JOINT MEMORIAL TO THE SENATE AND HOUSE OF REPRESENTATIVES OF THE UNITED STATES IN CONGRESS ASSEMBLED, AND TO THE CONGRESSIONAL DELEGATION REPRESENTING THE STATE OF IDAHO IN THE CONGRESS OF THE UNITED STATES

We, your Memorialists, the House of Representatives and the Senate of the State of Idaho assembled in the First Regular Session of the Fifty-eighth Idaho Legislature, do hereby respectfully represent that:

Whereas, citizens of the state of Idaho strongly believe that basic civil liberties must be preserved and protected, even as we seek to guard against terrorist and other threats to the national security; and

Whereas, there are some principles of our democracy which are so fundamental to the rights of citizenship that they must be preserved to guard the very liberties we seek to protect; and

Whereas, legislation known as the SAFE Act has been introduced in the Congress of the United States to adopt amendments to the Patriot Act which would address some of the most problematic provisions of the Act; and

Whereas, the SAFE Act amends the Patriot Act to modify the provision regarding

the roving wiretaps to require that the identity of the target be given and that the suspect be present during the time when surveillance is conducted; and

Whereas, the SAFE Act revises provisions governing search warrants to limit the circumstances when the delay of notice may be exercised and to require reports to the Congress when delays of notice are used; and

Whereas, the SAFE Act requires specific and articulable facts be given before business records are subject to investigation by the Federal Bureau of Investigation; and

Whereas, the SAFE Act provides that libraries shall not be treated as communication providers subject to providing information and transaction record of the library patrons; and

Whereas, it is appropriate that the Legislature of the State of Idaho, on behalf of the citizens of Idaho, express support of the efforts of Senator Larry Craig to adopt the SAFE Act, and encourage the full support of the Idaho congressional delegation.

Now, therefore, be it *Resolved by the members of the first Regular Session of the Fifty-eighth Idaho Legislature, the House of Representatives and the Senate concurring therein*. That the Idaho Legislature endorses the efforts to amend the Patriot Act to assure that it works well to protect our security but that it does not unnecessarily compromise essential liberties of the citizens of the United States. We urge the congressional delegation representing the State of Idaho in the Congress of the United States to support legislation introduced by Senator Larry Craig, known as the SAFE Act.

This is just one of hundreds of such statements issued by states, cities, and communities across the Nation on this subject.

I have actually heard colleagues saying that because there have been no publicly reported abuses of PATRIOT Act powers, there is no justification for changing the law. Since when do we have to wait for the Constitution to be breached to take action? Since when do the American people have to justify demanding checks and balances that will make sure there can be no such abuses? Since when did it become the American people's burden of proof to support protecting their civil liberties?

I thought the government worked for the people, and not the other way around

We are not the ones who should have to be justifying a call for checks and balances. It's up to the government to prove those checks and balances are not workable and not in the best interests of the Nation.

Now, we have heard a lot about the civil liberties protections that have been included in this conference report. I stand second to none in giving credit to our Judiciary Committee chairman, ARLEN SPECTER, for achieving these reforms. I well know the opposition he was up against, and I am very pleased he was able to persuade conferees—as he persuaded some in this body—that we can have both: protection of the privacy and civil liberties of innocent citizens, and aggressive fighting against terrorism.

It is worth noting that even those of our colleagues who opposed our original SAFE Act proposals ended up supporting the Senate bill that contained

civil liberties reforms. Today these same colleagues are praising the conference report's provisions along those lines—and my message to them is: why not go just a little further toward the Senate's version in some of these areas? You voted for them once before—why not again?

That's how much confidence I have in Chairman SPECTER—that with this additional expression of support from the Senate, he will be able to make a few last—but important—improvements.

The other body voted yesterday on the PATRIOT Act conference report, and a motion to reject that report and instead accept the entire Senate-passed version was narrowly defeated, 202–224. This is a remarkable vote. The U.S. House is a body of 435 Members. 215 is the majority, they were 13 short of passing the Senate bill, the very reform I am asking for today. But those of us seeking more time for negotiations aren't asking that the entire conference report be defeated; we aren't asking for the House to swallow the entire Senate bill. Instead, we have identified a few areas where we believe improvements could and should be made, and I think the House vote shows these changes would be welcomed by a substantial number in that body.

To those of my colleagues who are telling us to “quit while we're ahead,” I say: where would we be if they had stopped at the First Amendment of the Bill of Rights? Should they have quit while they were ahead, and forgotten about those other nine amendments?

These are important issues. Let's allow a little more time for the process to work, and respond to the concerns that our citizens have expressed.

#### 1. The changes we are seeking:

The conference report that we are voting on would allow the government to obtain library, medical and gun records and other sensitive personal information under Section 215 of the PATRIOT Act on a mere showing that those records are relevant to an authorized intelligence investigation. As business groups like the U.S. Chamber of Commerce have argued, this would allow government fishing expeditions targeting innocent Americans. We believe the government should be required to convince a judge that the records they are seeking have some connection to a suspected terrorist or spy, as the three-part standard in the Senate bill would mandate.

Some conferees argue that the language in the conference report would permit the government to use the “relevance” standard only in limited, extraordinary circumstances, and that the Senate bill's three-part standard would continue to apply in most circumstances. To the contrary, the conference report never requires the government to demonstrate that the individual whose records are sought is connected to a terrorist or spy; rather, it permits the “relevance” standard to be used in every case.

It has also been asserted that the government should not be required to

abide by the three-part Senate standard because the Department of Justice demonstrated in a classified setting that “circumstances may exist in which an individual may not be known to a foreign power or be a recognized terrorist but may nevertheless be crucial to an authorized terrorism investigation.” We are convinced, however, that the three-part standard provides the necessary flexibility in such circumstances. Indeed, the government need only show that the records they seek are relevant to the activities of a suspected terrorist or spy, a very low burden to meet, but one that will protect innocent Americans from unnecessary surveillance and ensure that government scrutiny is based on individualized suspicion, a fundamental principle of our legal system.

Unlike the Senate bill, the conference report does not permit the recipient of a Section 215 order to challenge its automatic, permanent gag order. Courts have held that similar restrictions violate the First Amendment. While some have asserted that the FISA court’s review of a government application for a Section 215 order is equivalent to judicial review of the accompanying gag order, the FISA court is not permitted to make an individualized decision about whether to impose a gag order when it issues a Section 215 order. It is required by statute to include a gag order in every Section 215 order; the gag order is automatic and permanent in every case. The recipient of a Section 215 order is entitled, but does not receive, meaningful judicial review of the gag order.

The conference report does not sunset the National Security Letter, NSL, authority. In light of recent revelations about possible abuses of NSLs, which were reported after the Senate passed its reauthorization bill, the NSL provision should sunset in no more than four years so that Congress will have an opportunity to review the use of this power.

The conference report does not permit meaningful judicial review of an NSL’s gag order. It requires the court to accept as conclusive the government’s assertion that a gag order should not be lifted, unless the court determines the government is acting in bad faith. As a result, the judicial review provisions do not create a meaningful right to review that comports with due process.

The conference report does not retain the Senate protections for “sneak and peek” search warrants, as Chairman SPECTER’s letter suggests. The conference report requires the government to notify the target of a “sneak and peek” search within 30 days after the search, rather than within 7 days, as the Senate bill provides and as pre-PATRIOT Act judicial decisions required. That 7-day period was the key safeguard included in the Senate sneak and peek provision. The conference report should include a presumption that no-

tice will be provided within a significantly shorter period in order to better protect Fourth Amendment rights. The availability of additional 90-day extensions means that a shorter initial time frame will ensure timely judicial oversight of this highly intrusive technique but not create undue hardship on the government.

Unlike the Senate bill, the conference report requires a person who receives an NSL to notify the FBI if he consults with an attorney and to identify the attorney to the FBI. This will have a significant chilling effect on the right to counsel. There is no such requirement in any other area of law.

Unlike the Senate bill, the conference report for the first time imposes criminal penalties on an NSL recipient who speaks out in violation of an NSL gag order, even if the NSL recipient believes his rights have been violated.

The conference report for the first time gives the government the power to go to court to enforce an NSL, effectively converting an NSL into an administrative subpoena. An NSL recipient could now potentially be held in contempt of court and subjected to serious criminal penalties. The government has not demonstrated a need for NSLs to be court enforceable and has not given any examples of individuals failing to comply with NSLs.

The conference report would give the government unilateral authority to keep all its evidence secret from a recipient who is challenging an NSL, regardless of whether the evidence is classified. This will make it very difficult for an NSL recipient to obtain meaningful judicial review that comports with due process.

As with Section 215, the conference report fails to require notice to the target of an NSL if the government seeks to use the records obtained from the NSL in a subsequent proceeding, and fails to give the target an opportunity to challenge the use of those records.

The conference report does not eliminate the catch-all provision that allows sneak and peek searches any time that notice to a subject would “seriously jeopardize” an investigation. This exception could arguably apply in almost every case.

Many of my colleagues say the PATRIOT Act is just giving law enforcement powers in terrorism investigation what they already have in drug investigation.

Well not here. The conference report does not include meaningful checks on “John Doe” roving wiretaps, a sweeping power never authorized in any context by Congress before the PATRIOT Act. A John Doe roving wiretap does not identify the person or the phone to be wiretapped. Unlike the Senate bill, the conference report does not require that a roving wiretap include sufficient information to describe the specific person to be wiretapped with particularity.

The conference report does not require the government to determine

whether the target of a roving intelligence wiretap is present before beginning surveillance. An ascertainment requirement, as has long applied to roving criminal wiretaps, is needed to protect innocent Americans from unnecessary surveillance, especially when a public phone or computer is wiretapped. Yes, new technology is challenging but should not allow our privacy rights to be swept away.

The conference report retains the PATRIOT Act’s expansion of the pen/trap authority to electronic communications, including e-mail and Internet. In light of the vast amount of sensitive electronic information that the government can now access with pen/traps, modest safeguards should be added to the pen/trap power to protect innocent Americans, but the conference report does not do so.

The conference report retains the PATRIOT Act’s overbroad definition of domestic terrorism, which could include acts of civil disobedience by political organizations. While civil disobedience is and should be illegal, it is not necessarily terrorism. This could have a significant chilling effect on legitimate political activity that is protected by the First Amendment.

While the issues discussed above are the core concerns about the conference report that the original cosponsors of the SAFE Act asked to be modified, they are not the only problems that we see with the conference report. There are a number of other areas where we believe the conference report falls short.

Unlike the Senate bill, the conference report requires a person who receives a Section 215 order to notify the FBI if he consults with an attorney and to identify the attorney to the FBI. This will have a significant chilling effect on the right to counsel. There is no such requirement in any other area of law.

The conference report would give the government unilateral authority to keep all its evidence secret from a recipient who is challenging a 215 order, regardless of whether the evidence is classified. This will make it very difficult for the recipient of a Section 215 order to obtain meaningful judicial review that comports with due process.

Under the conference report, the target of a Section 215 order never receives notice that the government has obtained his sensitive personal information and never has an opportunity to challenge the use of this information in a trial or other proceeding. All other FISA authorities—wiretaps, physical searches, pen registers, and trap and trace devices—require such notice and opportunity to challenge.

The conference report would allow the government to issue NSLs for certain types of sensitive personal information simply by certifying that the information is sought for a terrorism or espionage investigation. This would allow government fishing expeditions

targeting innocent Americans. As business groups have argued, the government should be required to certify that the person whose records are sought has some connection to a suspected terrorist or spy.

Again, what is important is to understand and plead with our colleagues—that how you negotiate is through power and leverage, not to give up and walk away. I am not going to suggest that the chairman did that at all. He and I dialogued many times over the course of the last 2 weeks as to what we might do to gain greater position, to gain the Senate position with the House.

My compliments to him for the successes that are in the conference report because there are some. But my frustration is that what we did in the Senate in this very important instance has not been adhered to. Those safeguards have not been put in place to the extent that we had asked. And I believe it is reasonable and right to say: No, let us live for 3 more months with the current law while we attempt to achieve even greater protection for the private citizens of this country but most importantly recognize that the law enforcement community needs that time to ask permission and to show that they have very real reason to believe that somebody is involved.

I think it has been a very excellent debate which has gone on on the floor of the Senate. But there is a reality check. That reality check is a vote on the conference report, and I ask my colleagues to vote against cloture so that we can reenter this debate one more time with the House to make sure we get it right so that the first amendment and the fourth amendment are not, in some way, in jeopardy.

I yield the floor.

Mr. SPECTER. Mr. President, I have worked very closely with the distinguished Senator from Idaho, as he noted, on this matter, with lots of discussions and lots of dialog. He and I worked together on the Ruby Ridge investigation, as Senator LEAHY was involved on the other side of the aisle. That was a high watermark of congressional oversight protection of the individual rights.

I have a long history with Senator CRAIG and agree with him that you don't compromise on civil liberties. What you do with civil liberties is you protect them.

But I submit to my colleague from Idaho that we have protected.

I ask him: He starts off with the delayed notice. The pejorative term is "sneak and peek." Delayed notice is when the law enforcement official shows the judge, the impartial arbiter between the citizen and law enforcement, that there are reasons to have delayed notice.

Ordinarily, you have a search-and-seizure warrant. The target knows that right away.

The current bill provides for "reasonable period of time," which could mean

anything. Some have gone for enormous periods of time. The House came in at 180 days and the Senate came in at 7 days. We were not unaware in picking 7 days we were starting a negotiating track. We were not going to have our entire way. The Fourth Circuit said 45 days is presumptively reasonable and we ended up with 30.

I ask my colleague from Idaho, is it a compromise of civil liberties to have a 30-day notice period where you change the existing law from what is reasonable—which means anything—and the House comes down 150 days and we go up 30 days; is that a compromise?

Mr. CRAIG. I know my chairman thinks that is a success. First, we have broken and entered a private citizen's home without telling them. Does it take 30 days for law enforcement to determine that what they have found is so valuable that they cannot tell the citizen they have broken into their home? Why not 7 days? And then go to a judge and prove your worth with the evidence you have established by that "break-in"—because that is what you have done. My home is my sanctuary. We have said, yes, we are going to let you break and enter, sneak and peek, but we are going to make sure it is very limited.

So I don't view 30 days as a compromise. Seven days. You were right to begin with. You are wrong now.

Mr. SPECTER. You cannot take all my time.

I will ask another question but may make the argument—

Mr. CRAIG. If the Senator will yield, I will be kinder.

The PRESIDING OFFICER. The Senator from Pennsylvania has the floor.

Mr. SPECTER. No, no.

Mr. CRAIG. All right.

Mr. SPECTER. All of this effort to get the floor and I will yield right away? Absolutely not.

The point of the time is not to show what they have gotten is valuable. The time is in order to enable them to conduct an investigation. They got the order initially because they showed a judge, an impartial magistrate, that there was a reason to think if the target knew, it would impede the investigation.

I will let my 98 colleagues evaluate whether that is a compromise on civil liberties.

The letter which the Senator from Idaho refers to, which was filed yesterday and printed in the RECORD, I have already put the reply into the RECORD, which we circulated today. In that letter, the assertion made that the Foreign Intelligence Surveillance Court is not permitted to make an individualized decision about whether to impose a gag order when it issues a section 215 order is incorrect. That is not right. The statute provides there may be a petition to have the court review the 215 order and the Foreign Intelligence Surveillance Court has the authority at that point to say there will be no gag order.

When the Senator from Idaho puts in his letter that they want a sunset on the national security letter, I point out to him the PATRIOT Act does not establish the national security letter. That has been in existence for decades.

Mr. CRAIG. It is broadening of the application, not the establishment.

Mr. SPECTER. Regular order, Mr. President.

The PRESIDING OFFICER. The Senator from Pennsylvania has the floor.

Mr. SPECTER. The PATRIOT Act does not establish the national security letter. But the PATRIOT Act was used as a vehicle for extending civil rights, which the Senator from Idaho is concerned about. He is a civil libertarian and so am I. When he introduced the so-called SAFE Act to cut back on the PATRIOT Act, and he came to me and asked, Would you cosponsor it, I immediately said yes. But when we structured the PATRIOT Act, we took a look at the national security letters and we said, this is an occasion where we ought to rein in the national security letter. And we did so by saying the recipient did not have to keep quiet—which you have to do under existing law—but you could go to a lawyer. I don't think you ought to have to have legislative authority to go to a lawyer. But we made no bones about it. We were not going to leave that to chance, and we said you can go to a lawyer. Then that lawyer could go to court and quash the national security letter if it is unreasonable.

The standard of "reasonable" is all over the law. It is what a reasonable person would do. It controls tort law, accidents, reasonable personal negligence, it controls antitrust law, reasonable restraints. The court has plenary authority, full authority to quash the national security letter if it is unreasonable.

Now, when you come to the point about disclosure, you are dealing with some pretty tough stuff. You are dealing with national security. The Senate bill that went through without objection by anyone, including the Senator from Idaho, has a provision that there is a conclusive presumption if the Government certifies that it will impede national security or harm foreign relations. But in the conference report, in part because Senator CRAIG was vigilant in talking to us about the conference report, we said, that is not enough. It ought to be on the Government, some law enforcement officer in the field. We put in the requirement it had to be the Attorney General or Deputy Attorney General, head of the FBI, or Assistant Attorney General—all positions which are confirmed by the Senate, so they are ranking positions.

We saw to it that the national security letter was reined in. We also saw to it that the wiretaps were reined in. Then we had the big argument about the sunset. I almost had a feeling in one long telephone conversation with Senator CRAIG about 10 days ago that if we got a 4-year sunset, which was a

golden prize—the House wanted 10 years and the Senate had 4 years; the House wanted the compromise on 7, halfway between; we said no, we are not going to do that. This was a matter of great importance to many Senators, especially to Senator CRAIG. So we can review all of this and we can have oversight. I almost thought if we got 4 years, we would get Senator CRAIG. He is nodding in the negative.

Mr. CRAIG. It was third on my list.

Mr. SPECTER. We did not get Senator CRAIG.

Mr. President, when the six Senators wrote a letter with a lot of concerns, we responded with a seven-page letter. When yesterday we received a letter with nine Senators, we responded with an eight-page letter which the staff has worked on. We have had extraordinary staff working on all sides. This goes for my staff, this goes for Senator LEAHY's staff. The Judiciary Committee has not had any time off. We had an August recess for the Senate but not for the Senate Judiciary Committee.

The PRESIDING OFFICER. The time of the Senator is expired.

Mr. SPECTER. In that event, I stop.

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#### RECESS

The PRESIDING OFFICER. Under the previous order, the Senate will stand in recess until the hour of 2:15 p.m.

Thereupon, the Senate, at 12:47 p.m., recessed until 2:15 p.m., and reassembled when called to order by the Presiding Officer (Mr. THOMAS).

The PRESIDING OFFICER. Under the previous order, the time from 2:15 until 3:30 shall be equally divided between the two leaders or their designees.

Mr. BAUCUS. I thank the Chair.

(The remarks of Mr. BAUCUS pertaining to the introduction of S. 2107 are located in today's RECORD under "Statements on Introduced Bills and Joint Resolutions.")

Mr. BAUCUS. Mr. President, I thank the Senators from Oklahoma and Idaho for their courtesy. There were three of us scheduled to speak at the same time. Obviously, that is very difficult to do. These two Senators graciously allowed me to go ahead. I thank them both.

The PRESIDING OFFICER (Mr. THUNE). The Senator from Oklahoma.

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#### LABOR-HHS APPROPRIATIONS CONFERENCE REPORT

Mr. COBURN. Mr. President, I wish to spend a few minutes of my time talking about the Labor-HHS bill and a lot of the comments we have heard in the Chamber over the last couple days as to what we are and are not doing. I thought the American public should have a good perspective about what has happened in terms of the growth of this department since the fiscal year 1998 started.

This is a tight budget. I commend those who are in charge of it. It is a

vast improvement over what we have done in other years. There is no question there are some unmet needs that can be claimed out of this appropriations bill. That is the time we face in our country. The Federal Government cannot meet every need.

In regard to history, Health and Human Services from 1998 to 2005, over that 8-year period, in real dollars has increased at over 10 percent per year. It has actually increased over 13 percent per year, but we have had inflation of 3 percent. So what we have seen is an actual doubling of the size of that component of the Federal Government from September 30 of 1997 to today. It has doubled in size. Education is the same. Actually, education more than doubled in size, net of inflation. That is in terms of real dollars. So when we hear the words that we can't do what we are doing, I would have our fellow colleagues look down the road a little bit. This is just a taste of what we are going to be facing if we don't start making the choices based on priority.

I tell you, we are on an unsustainable path even with this bill. We cannot meet those needs that need to be met if we continue to not prioritize in the functioning of the Federal Government.

Again, I take seriously the claim that we would take away food stamps from people who have no other source of nutrition. But I also take seriously the claim and the knowledge reported by the Department of Agriculture and the Food Stamp Program that last year they paid out \$1.6 billion in food stamps to people who were ineligible, who had other sources of income. And yet they continued to spend \$1.6 billion.

Why is all this important? It is important because this last year, ending September 30, we spent \$538 billion more in that fiscal year than we took in. So the debate has to be in the context of what are we doing to our children and our grandchildren. We have to make a measured balance about how we make these decisions.

The decision of trimming programs that are not effective and doing the hard oversight—the real thing that is lacking is us doing the work of oversight. We have opportunities lost when we don't put money into those programs that are more effective and take money from those programs that are less effective.

The debate is centered about us and our constitutional duties to do oversight but also in terms of the future and what kind of heritage and legacy in terms of debt are we going to leave to our children.

Overall, the Congress has done a good job with this bill. There are still tons of waste in this bill. This bill totaled has \$602 billion worth of spending in it.

I have one last comment, and that is there is \$55 billion for the new Medicare Part D Program, of which only 1 out of every 15 people who are eligible for that program is a new person who

would not have had drugs. So we are going to pay for 14 people who had insurance or other coverage to cover one additional person. And none of that money is paid for. That \$55 billion is coming from our grandchildren.

This is a program on which I did not have an opportunity to vote. I would have voted against it. I also didn't have an opportunity to attach it to a supplemental, which I would have offered, to eliminate or freeze this program because our children and our grandchildren absolutely cannot afford it. It is \$8.7 trillion between now and 2050 that we are going to put into this brandnew program that is starting today that helps 1 in 15. It helps 1 in 15 who need it. And yet we are saying it is OK for our children to pay that bill.

I commend Senator SPECTER on his hard work on the bill. This is the first time in years that the hard choices have been made. I remind our colleagues that as we face the future with Social Security, Medicare, and Medicaid and a war and natural disasters, hard choices is what we are here for. Yes, as Senator KENNEDY said today, we do need to be concerned about those who can't take care of themselves, but I put forward to my colleagues that with \$600 billion—that is \$20,000 per man, woman, and child in this country—we ought to be able to take care of them.

I yield the floor.

The PRESIDING OFFICER. The Senator from Idaho.

Mr. CRAPO. I thank the Chair.

(The remarks of Mr. CRAPO and Mr. THOMAS pertaining to the introduction of S. 2110 are printed in today's RECORD under "Statements on Introduced Bills and Joint Resolutions.")

The PRESIDING OFFICER. The Senator from Washington.

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#### SPENDING CUTS

Mrs. MURRAY. Mr. President, I have traveled throughout my home State of Washington throughout the past month. A lot of people have told me time and time again they want our country to be strong again, and to be strong we need to invest right here at home, in our people, in our infrastructure, and in our communities. But today the Republican leadership is trying to push us in the wrong direction by cutting those critical investments. Republicans today are attempting to interpose an across-the-board spending cut that will hurt our families, it will hurt our local communities, and it will even jeopardize the housing and safety of the American people.

I am speaking out today to explain how those misguided cuts will affect housing for vulnerable families and the safety of every American who plans to fly this holiday season.

I thank Senator BYRD for his tremendous leadership and his speaking out about this misguided Republican plan.