

Often, foreign embassies, within the U.S., will issue consular cards to their citizens who are in the U.S. These cards are unnecessary because the U.S. government either recognizes foreign passports or issues its own identification documents to foreigners who are legally in the U.S. The majority of consular cards have been found to be used as identification for illegal aliens and have been called an insecure document by the FBI and Department of Homeland Security.

Another provision in my bill will address Social Security benefits for work performed by illegal aliens.

Under current law, former illegal aliens, who gain legal status, are able to receive Social Security benefits for the work they performed while they were illegal.

My bill will end this practice by not allowing anyone to collect Social Security benefits for work performed while they were illegally present in this country. Our Social Security system is already strained and faces bankruptcy. Allowing work performed by illegals to be counted and used to further drain our Social Security system must stop.

The ENFORCE Act will also address fraudulent use of the Individual Taxpayer Identification Number, ITIN.

The IRS created the ITIN in 1996 to improve tax administration because it needed a more efficient way to identify and track the tax reporting of non-citizens, such as foreign investors, who could not obtain a Social Security number when filing tax returns and other tax documents. ITIN applications can be mailed to the IRS, submitted at an IRS walk-in, taxpayer assistance center, or submitted through an acceptance agent.

A GAO testimony by Michael Brostek before the House Subcommittee on Oversight and Social Security in March 2004 revealed that IRS controls for the ITIN could be easily bypassed and that it could be used for non-tax purposes, such as general identification. Mr. Brostek went on to testify that the "IRS concluded that most resident aliens who have ITINs and earn a wage income are not legally employed in the U.S."

This creates many concerns about use of the ITIN by illegal aliens, which is why my bill will make the ITIN look physically different than a Social Security number and not allow it to be used to obtain tax credits.

Another issue my bill addresses is building a fence along our southern border.

It is known, according to government reports, that foreign nationals from countries such as Syria, Iran and Saudi Arabia have crossed our southern borders, not to mention the high number of illegal aliens from other countries.

According to We Need a Fence, an organization dedicated to ensuring a fence is built along our southern border, a CNN poll has shown that 87 percent of its respondents support building a security fence along the U.S.-Mexico border.

The ENFORCE Act will direct a high security, state-of-the-art fence to be built along our southern border to prevent illegal border crossings. This fence will actually consist of two fences separated by a patrol road, ditches, barbed wire, and surveillance cameras. While the initial cost to build the fence is considered high by some, I firmly believe it will result in savings in the long run by preventing illegal border crossings and eliminating the cost of finding, arresting, detaining and deporting illegal aliens.

The ENFORCE Act will also make it illegal to establish day-laborer centers and to assist illegal aliens in finding employment, much like the sites that are set to be built for illegal aliens in Fairfax County, VA.

Earlier this year, the Fairfax County's Board of Supervisors voted unanimously to provide \$400,000 in taxpayer funds to be used to build three day laborer sites to assist illegal aliens in finding employment. It makes no sense to not only ignore the large numbers of illegal aliens gathering in one place, but to enable them to continue to break the law by working in the U.S. and encourage others, such as employers, to break the law by helping illegals obtain jobs.

Another problem we face is educating illegal aliens.

Some states, such as Oklahoma, allow illegal aliens to receive in-state tuition at colleges and universities. This is a slap in the face to out-of-state students who must pay higher tuition than illegal aliens who have broken the law and do not even belong in our country. My bill will address this problem so that illegal aliens will not be able to receive this benefit.

I would like to conclude by sharing a personal story regarding illegal aliens who commit crimes in the United States and then flee across the border to Mexico.

Last May, my friend's son, Jeff Garrett, was tragically shot by an illegal alien while Jeff was turkey hunting in Colorado. After he shot Jeff, the illegal fled to Mexico, where he is hiding today.

I know this story is just one among many about innocent Americans murdered each year by illegal aliens who then find safe harbor in Mexico.

I believe the ENFORCE Act will not only help prevent these criminals from coming across our borders, but is a good start to ending our rampant problem of illegal immigration in general.

I ask my colleagues to join me in solving our immigration problem by cosponsoring the ENFORCE Act.

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

The PRESIDING OFFICER. Under the previous order, the Senate will resume consideration of the conference report to accompany H.R. 3199, which the clerk will 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 be 60 minutes equally divided between the majority and the minority.

Who yields time? The Senator from Pennsylvania.

Mr. SPECTER. Mr. President, we are approaching a vote to invoke cloture on the PATRIOT Act which will require 60 Senators to cut off debate so that we can move ahead to a vote up or down on the act. The act, as is well known, is set to expire on December 31, 2005. When the Judiciary Committee, which I chair, approached the reauthorization of the PATRIOT Act, we tackled it early in the year, and there was a committee bill, which I sponsored, which had remarkable success getting a unanimous vote in the committee, which has Senators from both ends of the political spectrum. It then came to the floor in a manner perhaps unprecedented: It went through by unanimous consent. There was no debate. Not a single Senator objected. It was heralded as uniquely well balanced, from the considerations of providing adequate tools for law enforcement to continue the fight against terrorism, which is vital for our national safety, and balanced to protect civil liberties.

Under our system of government, the Senate does not have the last word. I only wish that were so. We have a bicameral system. Then the legislation has to receive the signature of the President.

We then went into negotiations with the House of Representatives. I again thank and commend Chairman SENSENBRENNER, who is the chairman of the Judiciary Committee in the House of Representatives, for working through some very difficult proceedings to come to a conclusion that a conference report could be signed and filed and voted upon by both Houses.

The House of Representatives has supported the conference report with a 77-vote majority—very substantial. Now we have it in the Senate. The conference report was not signed by Senators when originally presented on November 18, 2005. I declined to sign it because I wanted to work through and try to get the joinder of Democrats. It has been my experience that the close relationship which Senator LEAHY and I have established, working on the Judiciary Committee on a bipartisan basis, has yielded significant positive results for the committee, for the Senate, for the Congress, and for the country. We have been able to work through major legislation this year, passing class action reform, passing bankruptcy reform, voting out and confirming the Attorney General very promptly, working through data privacy—a very tough legislative bill

voted out of committee; voting out of committee asbestos reform. People said that could not be done. It is going to be the first item on the agenda next year.

It was apparent to me that we needed to have a bipartisan approach. As one Senator said on the floor yesterday in announcing that the Senator was going to vote against cloture—he had been a cosponsor of the bill, but in the absence of this bipartisan support there was too much public confusion. The public cannot understand all of the intricacies of the PATRIOT Act, and the shorthand signal is, when Democrats and Republicans agree, there is a modicum of confidence. Regrettably, we could not get it on this bill.

When the debate started earlier this week, I invited all Members to come to the floor to state what their concerns were. I called many Members to reach out to those I knew could use some elaboration and also discussion for my benefit, and then from the floor repeatedly urged my colleagues to come to the floor, raise their concerns, let us have a discussion. Perhaps we can satisfy their concerns. If not, we can describe the bill and explain it so the people and the Senators will understand it.

I do not think we have been successful in conveying to the public at large, and perhaps not even to the Senators, what this bill really provides. In this morning's paper, one of the most prominent newspapers in the United States, they described the bill this way:

... the bill gives the government far too much power to issue "national security letters," demanding private financial, medical and library records, without the permission or oversight of a judge.

The writer of this editorial does not understand the basic tenets of the bill. The writer of this editorial is mixing up section 215, which provides for obtaining records—library records, medical records—with national security letters. The bill is explicit in giving judicial review.

At the present time, an agent can go out and, unilaterally, on the agent's own authority, get library records or medical records. One of the principal safeguards in the PATRIOT Act, as passed by the Senate and as maintained by the conference report, has been to interpose the magistrate, the judge, in between the policeman and the citizen, to see to it that law enforcement does not overstep its bounds; that law enforcement could get access on a showing of reason to do so, but there is judicial supervision there.

One of the other most prominent newspapers in the country published a story about 30,000 national security letters being issued, which is false. I cannot tell you what the facts are because it is classified. I have tried to get the Department of Justice to come forward and say what the facts are. But repeatedly on the floor of the Senate we heard this quotation: 30,000 national se-

curity letters—which is absolutely false. I beg my colleagues not to base their votes on what they read in the newspapers but to get a briefing, find out what the facts are. Senators can find that out in a classified briefing, but do not rely upon the assertions in the newspapers or the assertion in today's editorial, which is just wrong as it describes what the act is.

On the floor of the Senate yesterday there were references to hometown newspapers saying hang tough.

Newspapers don't vote. Senators vote. Jefferson made one of history's great statements in saying if he had to choose between government without newspapers or newspapers without government, he would choose newspapers without government. We do not have to make that choice. We have both newspapers and government. And render under Caesar—the appropriate line. And let us look to the newspapers, let us consider what they have to say, but when they are wrong, let's not act on wrong information. Let's not act on wrong information. It is up to Senators to hang tough. We don't have to take instructions from the newspapers, as we heard yesterday, urging their United States Senator to hang tough. They don't vote. We vote.

A big, tough problem here has been to acquaint people with what this bill does provide. I am confident, if that has occurred sufficiently, that this bill will be passed.

I have been on the Judiciary Committee during my entire tenure in the Senate and have demonstrated a strong record to protect civil liberties on legislation which has come through the committee to the floor and in the confirmation process. Nobody has a stronger record in this body than I do. I will take second place to no one. There are many equals here. Many in this body, I would say all in this body, are concerned about civil liberties. But there is no mathematical equation where it can be established, as to the balance between law enforcement and the balance as to civil liberties. If you take a look at the specifics of this legislation, that balance has been achieved. It may not be as good a balance as the Specter-Leahy bill, which passed the Senate unanimously and without dissenting voice here, but it has balance.

I have already commented about section 215. There is judicial supervision. And, on national security letters, they were not created with the PATRIOT Act, but we took the occasion of the PATRIOT Act to put in safeguards on national security letters, which are in existence. If the PATRIOT Act goes out of existence, you will not have section 215 to get certain records by law enforcement, but the national security letters are still there. But we took this occasion to provide for judicial review.

The recipient may consult a lawyer, who moves to quash the national security letter if it is unreasonable. It may not be everything that everybody

wants, but in legislation and the art of the possible, you don't get everything that everybody wants.

Then you have the delayed notice warrants. A delayed notice warrant means that the judge has examined the situation and has given special permission that the law enforcement officials do not have to notify the target when the search and seizure warrant is executed.

Ordinarily, if there is a search and seizure warrant, the law enforcement officers go to the premise or an office and it is known to the target, but where there are reasons to keep it secret because the disclosure would impede an investigation, our laws have permitted for decades a delayed notice warrant.

Then the concern was, How long should there be before notice is given? The Senate bill had 7 days, the House bill had 180 days, and we compromised on 30 days. The Fourth Circuit Court of Appeals said that presumptively 45 days would be adequate.

The delayed notice requirement is illustrative of the vagaries of how you have something in perfection. But when the Senate established a 7-day notice requirement, we knew we were going to meet in a negotiating session, and I thought 30 days was a tremendous achievement for prompt notification. The House came down 150 days, from 180 to 30, and we went up by 23 days.

Then there is the provision of the roving wiretaps which has been tightened up, as I explained in greater detail yesterday and earlier this week—twice. There has to be a description of the individual who has been intercepted, and there has to be a showing, to have a roving wiretap, that the person is going to resist the wiretap.

Then you have what is perhaps as important as any provision—I wouldn't say the most important, they are all important, but as important as any—sunset. The House wanted a 10-year sunset, the Senate said 4 years is what it ought to be, and the House was insistent on compromising in between at 7 years, and we held fast at 4 years. It had been my expectation with good reason to believe that some Democrats would sign the conference report if it came in at 4 years. It required assistance from the White House, and the President was personally involved in the 4-year decision—not to the satisfaction of the House conferees, but we got that done.

If you take a look at the specifics, if you don't get your facts from the newspapers but instead get your facts from the CONGRESSIONAL RECORD, if you get your facts from reading the statute, I believe a fair conclusion would be that it is balanced. It is nice to be the heroes of the editorial pages. It makes great hometown reading. We have had quite a few comments on the floor of the Senate on the PATRIOT Act and on other acts citing the editorials and how pervasive, albeit subtle, that influence is.

I have only been chairman of the committee for less than a year, but I have come to see the vicissitudes of leadership. You don't have the freedom to be the dissenter, to stand up and articulate your own views and to accept nothing short of what ARLEN SPECTER has done or I am going to vote no. I have done that a few times when I have had greater freedom, but if you are the chairman of the committee, you have to carve out consensus.

In refusing to sign the conference report on November 18, 2005—to the dissatisfaction of many people—but waiting until December to sign it, that was an effort to gain more negotiations and to try to satisfy more people. My job was to get a consensus, was to work through what is the art of the possible, to get a bill.

The six Senators who opposed the bill issued their press releases not before the ink was dry on the conference report but before the ink was finished on the conference report. When I went to the press galleries on December 8, 2005 to announce the conference report, before I got there the dissenters had already issued their press releases. They weren't waiting to see what the conference report had to say. They did not issue their objections before the ink was dry; they issued their objections before the ink was finished. And you can do that if you are a dissenter and if you are an objecter. But if you are the chairman and you have the obligation to pull the parties together—and when I signed the report on December 6, 2005 I still couldn't get some members of my committee to sign the report. They thought it went too far.

The President has taken the position that this conference report goes as far as he is going to go. I am advised that he issued a statement earlier today that he will not sign a 3-month extension. The majority leader said yesterday that he would not bring up a 3-month extension. There may be ways to get it on the floor in any event. You can't amend the conference report.

If I am given instructions in my capacity as chairman to go back and negotiate, I will salute and go back and negotiate and try to work through whatever circumstances require. But where the President has said he is not going to sign a 3-month extension, if he means business, and I think he does, then in voting on cloture and in looking to a final vote up or down, this body is going to be faced with the alternative of either accepting the conference report, which is a balanced bill, or, if not, the PATRIOT Act is going to expire, and the responsibilities will be on those of us who vote and take positions.

Although we are a considerable distance from 9/11—more than 4 years—terrorism continues to be a problem. This bill gives important tools to law enforcement in a balanced way. This bill has provisions to protect subways, seaports, and airports. It is important that we have a balanced bill, and it is

important that we have a bill. There is no mathematical formula, but this bill is a balanced bill.

How much time remains of my 30 minutes?

The PRESIDING OFFICER. Eight minutes forty seconds.

Mr. SPECTER. I yield the floor.

The PRESIDING OFFICER. The Senator from Vermont.

Mr. LEAHY. Mr. President, before I start, with the distinguished senior Senator from Pennsylvania in the Chamber, I totally appreciate what he said about the problems of being the leader on a committee and having to make the decisions of how you are going to get a bill through.

I was chairman of the committee when we put through the first PATRIOT Act. I remember the balancing act we went through at that time and how difficult it was to get a bill through. And that PATRIOT Act is this PATRIOT Act. It contains a number of items that I wrote.

I also note that throughout, the chairman and I have kept in very close contact. We have spoken several times. I have considered during my 31 years in the Senate that one of the things which has given me the greatest sense of satisfaction is the relationship the distinguished chairman and I have in getting things through, and we have. I am concerned because we have come so close on this.

As Senator SALAZAR noted, yesterday was the anniversary of the adoption of the Bill of Rights of the Constitution.

Yesterday we engaged in debate seeking to protect and reserve those rights under the USA PATRIOT Act. I thank Senators SUNUNU, FEINSTEIN, CRAIG, WYDEN, FEINGOLD, SALAZAR, and OBAMA for their thoughtful remarks, their willingness to work in a bipartisan way which, after all, is the best tradition of the Senate.

Let all Members understand, this is a vital debate. The terrorist threat to America's security is very real. It is vital we arm the Government with the tools needed to protect American society and security.

At the same time, the threat to civil liberties is also very real in America today. I do read the papers. Today's New York Times reports that over the past 3 years, under a secret order signed by President Bush, the Government has been monitoring international telephone calls and international e-mail messages of people inside the United States—with no court approval, no checks and balances, one person's signature and that is it. This warrantless eavesdropping program is not authorized by the PATRIOT Act, it is not authorized by any act of Congress, and it is not overseen by any court.

According to the report, it is being conducted under a secret Presidential order based on secret legal opinions by the same Justice Department lawyers, the same ones who argued secretly that the President could order the use of torture.

It is time to have some checks and balances in this country. We are a democracy. Let's have checks and balances, not secret orders and secret courts and secret torture.

The debate is not about whether the Government should have the tools it needs to protect the American people. Of course it should. That is why, as I say, I coauthored the PATRIOT Act 4 years ago. That is why the act passed with such broad bipartisan support. When I voted for that PATRIOT Act, I did not think it was an ideal piece of legislation. I knew it would need careful oversight, but I was in favor of most of the PATRIOT Act. I am in favor of most of the PATRIOT Act now. That is why I voted for the bipartisan Senate bill in July. The distinguished chairman of the Senate Judiciary Committee got it through our committee unanimously, with Senators from the right to the left voting for it.

This debate is not whether it should suddenly expire. Of course it should not. That is why Senators from both parties have offered a bill to extend it in its present form for 3 months in order to give us time to either return to the bipartisan compromise we reached, pass the Senate bill, or reach a new bipartisan compromise.

Our goal is to mend the PATRIOT Act, not to end it. None of us want it to expire. Those who threaten to let it expire rather than fix it are playing a dangerous game. This is a debate about reconciling two shared and fundamental goals—assuring the safety of the American people and protecting their liberty by a system of checks and balances that keeps the Government, their Government, our Government, accountable.

America can do better. And we should. Those goals are not the goals of any particular party or ideology. They are shared American goals.

How to balance security with liberty and Government accountability was the most fundamental dilemma with which the Framers of our Constitution wrestled. How to adjust that balance with the post-September 11 world is the most fundamental dilemma before this Congress.

No one should doubt those who vote for cloture on the conference report care deeply about the liberty of the American people. We all do. No one should doubt that those who vote against cloture are devoted to protecting both the security and liberty of the American people. We all care deeply.

However, let us have a Government of checks and balances. In the long run, we are more secure. Our liberties are more secure. Frankly, we are more American in doing that.

The PRESIDING OFFICER. Senator from Nevada.

#### MILK REGULATORY EQUITY ACT OF 2005

Mr. REID. Mr. President, I ask unanimous consent that the Senate proceed