THE PATRIOT ACT

Mrs. FEINSTEIN. Mr. President, I rise today as a 12-year member of the Senate Judiciary Committee and a 5-year member of the Senate Intelligence Committee. I do so indeed with a very heavy heart. I have had, until now, great confidence in America's intelligence activities. I have assured people time and time again that what happens at home has always been conducted in accordance with the law.

I played a role in the PATRIOT Act. I moved one of the critical amendments having to do with the wall and the FISA court. Today's allegations as written in the New York Times really question whether this is in fact true. I read it with a heavy heart, yet without knowing the full story.

Let me be clear. Domestic intelligence collection is governed by the Foreign Intelligence Surveillance Act, known as FISA. This law sets out a careful set of checks and balances that are designed to ensure that domestic intelligence collection is conducted in accordance with the Constitution, under the supervision of judges and with accountability to the Congress of the United States.

Specifically, FISA allows the Government to wiretap phones or to open packages, but only with a showing to a special court—the FISA court—and after meeting a legal standard that requires that the effort is based on probable cause to believe the target is an agent of a foreign power.

Let me cite two sources. The first is a 1978 report by the Senate Select Committee on Intelligence. In the report is a comment by the then-chairman of that committee, Senator Birch Bayh. He is talking about the FISA bill that had just come to the floor in 1978:

The bill requires a court order for electronic surveillance, defined therein, conducted for foreign intelligence purposes within the United States or targeted against the international communications of particular United States persons who are in the United States. The bill establishes the exclusive means by which such surveillance may be conducted.

That is the bill, FISA, which was passed in 1978.

Second, in late 2001 this subject came up again on the Senate Intelligence Committee. The Senate Intelligence Committee discussed this subject and amended at that time in its authorization bill National Security Act section 502, which is the reporting of intelligence activities other than covert action.

Section 502 states:

To the extent consistent with due regard for the protection from unauthorized disclosure of classified information relating to sensitive intelligence sources and methods or other exceptionally sensitive matters, the Director of Central Intelligence and the heads of all departments, agencies, and other entities of the United States Government involved in intelligence activities shall:

(1) keep the congressional intelligence committees—

It doesn't say only the chairman and the vice chairman—

fully and currently informed of all intelligence activities other than a covert action (as defined in section 503(e)), which are not the responsibility of, are engaged in by, or are carried out for or on behalf of any department, agency, or entity of the United States Government, including any significant anticipated intelligence activity and any significant intelligence failure.

And (2) furnish the congressional intelligence committees any information or material concerning intelligence activities, other than covert actions, which is within their custody or control, and which is requested by either of the congressional intelligence committees in order to carry out its authorized responsibilities.

At that time, we had this discussion about just the chairman and the vice chairman receiving certain information, and this act was amended, and section (b) was added to the National Security Act, called ''form and contents of certain reports.'' It was to clarify what the form and content of the reporting to the committee would be. And the wording is as follows:

Any report relating to a significant anticipated intelligence activity or a significant intelligence failure that is submitted to the congressional intelligence committees for the purposes of subsection (a)(1) shall be in writing and shall contain the following:

(1) a concise statement of any fact pertinent to such report;

(2) an explanation of the significance of the intelligence activity or intelligence failure covered by such report.

And then section (c) was added, ''standards and procedures for certain reports,'' that those standards and procedures would hereby be established.

What has happened is that it has become increasingly used just to notify a very few people. There are 535 Members of the Senate and the House of Representatives of the United States.

If the President of the United States is not going to follow the law and he simply alerts eight Members, that doesn't mean he doesn't violate a law. I repeat, that doesn't mean he doesn't violate a law. FISA is the exclusive law in this area, unless there is something I missed, and please, someone, if there is, bring it to my attention.

Section 105(f) of FISA allows for emergency applications where time is of the essence. But even in these cases, a judge makes the final decision as to whether someone inside the United States of America, a citizen or a noncitizen, is going to have their communications wiretapped or intercepted. The New York Times reports that in 2004, over 1,700 warrants for this kind of wiretapping activity were approved by the FISA Court. The fact of the matter is, FISA can grant emergency approval for wiretaps within hours and even minutes, if necessary.

In times of war, FISA section 111 states this:

Notwithstanding any other law, the President, through the Attorney General, may authorize electronic surveillance without a court order under this title to acquire foreign intelligence information for a period not to exceed 15 calendar days following a declaration of war by the Congress.

I would argue the resolution authorizing use of force was not a declaration of war. I read it this morning carefully. It does not authorize the President of the United States to do anything other than use force. It doesn't say he can wiretap people in the United States of America. And apparently, perhaps with some change, but apparently this activity has been going on unbeknownst to most of us in this body and in the other body now since 2002.

The newspaper, the New York Times, states that the President unilaterally decided to ignore this law and ordered subordinates to monitor communications outside of this legal authority.

In the absence of authority under FISA, Americans up till this point have been confident—and we have assured them—that such surveillance was prohibited.

This is made explicit in chapter 119 of title 18 of the criminal code which makes it a crime for any person without authorization to intentionally intercept any wire, oral, or electronic communication.

As a member of the Senate Judiciary and Intelligence Committees, I have been repeatedly assured by this administration that their efforts to combat terrorism were being conducted within the law, specifically within the parameters of the Foreign Intelligence Surveillance Act which, as I have just read, makes no exception other than 15 days following a declaration of war.

We have changed aspects of that law at the request of the administration in the USA PATRIOT Act to allow for a more aggressive but still lawful defense against terror. So there have been amendments. But if this article is accurate, it calls into question the integrity and credibility of our Nation's commitment to the rule of law.

I refreshed myself this morning on the fourth amendment to the Bill of Rights of the Constitution of the United States. Here is what it says:

The right of the people to be secure in their persons, houses, papers, and effects, against unreasonable search and seizures, shall not be violated, and no Warrants shall issue, but upon probable cause, supported by Oath or affirmation, and particularly describing the place to be searched, and the persons or things to be seized.

Clearly an intercept, a wiretap, is a search. It is a common interpretation. A wiretap is a search. You are looking for something. It is a search. It falls under the fourth amendment.

Again, the New York Times states that a small number of Senators, as I said, were informed of this decision by the President. That doesn't diminish the import of this issue, and that certainly doesn't mean that the action was within the law or legal.

What is concerning me, as a member of the Intelligence Committee, is if eight people, rather than 535 people, can know there is going to be an illegal act and they were told this under an intelligence umbrella—and therefore, their lips are sealed—does that make the act any less culpable? I don't think so.

The resolution passed after September 11 gave the President specific authority to use force, including powers to prevent further terrorist acts in the form of force. I would like to read it. I read Public Law 107–40, 107th Congress:

Sec. 1. Short title.

This joint resolution may be cited as the ''Authorization for Use of Military Force''.

Sec. 2. Authorization for Use of United States Armed Forces.

(A) In General.—That the President is authorized to use all necessary and appropriate force against those nations, organizations, or persons he determines planned, authorized, committed, or aided the terrorist attacks that occurred on September 11, 2001, or harbored such organizations or persons, in order to prevent any future acts of international terrorism against the United States by such nations, organizations, or persons.

Then it goes on to say:

Consistent with section 8(a)(1) of the War Powers Resolution, the Congress declares that this section is intended to constitute specific statutory authorization within the meaning of section 5(b) of the War Powers Resolution.

This is use of force. It is not use of wiretapping or electronic surveillance of American citizens or those without citizenship within the confines of the United States. That is the jurisdiction of the FISA Court. There is a procedure, and it is timely.

As a matter of fact, we got into this rather seriously in the Judiciary Committee. At the time we wrote the PATRIOT Act, I offered an amendment to change what is called ''the wall'' between domestic intelligence-gathering agencies and foreign intelligence-gathering agencies from a ''primary purpose'' for the collection of foreign intelligence to a ''significant purpose.'' We had a major discussion in the committee, as is the American way. We were making public policy. We discussed what primary purpose meant. We discussed in legal terms what significant purpose meant.

So this was a conscious loosening of a standard in the FISA law to permit the communication of one element of Government with the other and transfer foreign intelligence information from one element of the Government to the other.

That is the way this is done, by law. We are a government of law. The Congress was never asked to give the President the kind of unilateral authority that appears to have been exercised.

Mr. BYRD. Right.

Mrs. FEINSTEIN. I was heartened when Senator SPECTER also said that he believed that if the New York Times report is true—and the fact that they have withheld the story for a year leads me to believe it is true, and I have heard no denunciation of it by the administration—then it is inappropriate, it is a violation of the law.

How can I go out, how can any Member of this body go out, and say that under the PATRIOT Act we protect the rights of American citizens if, in fact, the President is not going to be bound by the law, which is the FISA court?

And there are no exceptions to the FISA court.

So Senator SPECTER, this morning, as the chairman of the Judiciary Committee, announced that he would hold hearings on this matter the first thing next year. I truly believe this is the most significant thing I have heard in my 12 years. I am so proud of this Government because we are governed by the rule of law, and so few countries can really claim that. I am so proud that nobody can be picked up in the middle of the night and thrown into jail without due process, and that they have due process. That is what makes us different. That is why our Government is so special, and that is why this Constitution is so special. That is why the fourth amendment was added to the Bill of Rights—to state clearly that searches and seizures must be carried out under the parameter of law, not on the direction of a President unilaterally.

So I believe the door has been opened to a very major investigation and set of circumstances. I think people who know me in this body know I am not led toward hyperbole, but I cannot stress what happened when I read this story. And everything I hold dear about this country, everything I pledge my allegiance to in that flag, is this kind of protection as provided by the Constitution of the United States and the laws we labor to discuss, argue, debate, enact, then pressure the other body to pass, and then urge the President to sign. That is our process.

If the President wanted this authority, he should have come to the Intelligence Committee for an amendment to FISA, and he did not. The fact that this has been going on since 2002—it is now the end of 2005. Maybe 8 people in these 2 bodies in some way, shape, or form may have known something about it, but the rest of us on the Intelligence Committees did not.

That is simply unacceptable.

I yield the floor.

The PRESIDING OFFICER. The Senator from Minnesota.

Mr. DAYTON. Mr. President, I thank the Senator from California for her remarks and associate myself with them. I commend her for taking on this vital issue affecting all Americans.

I ask unanimous consent that the previous order be modified to permit Senator BYRD to precede me in speaking order.

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

The Senator from West Virginia.

Mr. BYRD. Mr. President, I thank the very distinguished Senator from Minnesota for his kindness and his courtesy in yielding to me. I want to say there is one thing I am sorry about with respect to the Senator from Minnesota. He made a bad decision some time ago. I wish he had not made it, and I begged him to retract on it and say he would not do it. He says he is not going to run again. I am sorry about that. He is one of the immortal 23 Senators who voted against that resolution that the Senator from California is talking about. I voted against it. I have been in the Senate for 47 years, and that is the vote of which I am most proud because in voting that way, I stood for this, the Constitution of the United States. That Constitution does not give any President the power to declare war. It says Congress shall have the power to declare war. I voted against that resolution, the best vote I have cast in 47 years in this Senate, and I am proud that the Senator from Minnesota can carry that tribute with him to the grave. I thank him and congratulate him. Again, I thank him for yielding to me.

Mr. President, I believe in America. Let me say that again. I believe in America. I believe in the dream of the Founders and Framers of our inspiring Constitution. I believe in the spirit that drove President Abraham Lincoln to risk all to preserve the Union. I believe in what President Kennedy challenged America to be—America, the great experiment of democracy.

Where the strong are also just and the weak can feel secure, the soul and promise of America stands as a beacon, praise God, of freedom and a protector of liberty which lights and energizes the people around the world. Today, sadly, that beacon is dimmed. This administration's America is becoming a place where the strong are arrogant and the weak are ignored. Fie on the administration.

Yes, we hear high-flung language from the White House about bringing democracy to a land where democracy has never been. We seem mesmerized with glorious rhetoric about justice and liberty, but does the rhetoric really match the reality of what our country has become?

Since the heinous attacks of September 11, I speak of the actions of our own Government, actions that have undermined the credibility of this great Nation around the world. These actions taken one at a time may seem justified, but taken as a whole they form an unsettling picture and tell a troubling story. Do we remember the abuses at Abu Ghraib? They were explained as an aberration. Do we remember the abuses at Guantanamo Bay? They were denied as an exaggeration. Now we read about this so-called policy of rendition—what a shame—a policy where the U.S. taxpayers are funding secret prisons in foreign lands. What a word, ''rendition.'' What a word, ''rendition.'' Shame. It sounds so vague, almost harmless. But the practice of rendition is abhorrent.

Let me say that again. It sounds so vague, almost harmless, but the practice of rendition is abhorrent—abhorrent.

The administration's practice of rendition is an affront, an affront to the principles of freedom, the very opposite of principles we claim we are trying to

transplant to Iraq and to other rogue nations.

The administration claims that rendition is a valuable weapon in the war on terror. But what is the value of having America's CIA sit as judge and jury while deciding just who might be a threat to our national security? Such determinations receive no review by a court of law—none. The CIA simply swings into action, abducts a person from some foreign country and flies them off to who knows where, with no judicial review of guilt or innocence. A person can be held in secret prisons in unnamed countries or even shipped off to yet another country to face torture at the hands of the secret police of brutal governments.

Is that what we want? Is this the America that our Founders conceived? Is this the America that Nathan Hale died for, when he said I only regret that I have but one life to lose for my country? Is this the America that he died for? Is this the America that our Founders conceived? Is this the America of which millions of people dreamed? Is this, I ask the Senate, the beacon of freedom inspiring other nations to follow?

The United States should state clearly and without question that we will not torture prisoners and that we will abide by the treaties that we signed, because to fail to do so is to lose the very humanity, the morality that makes America different, that makes America the hope for individual liberty around the world.

The disgusting, degrading, and damaging practice of rendition should cease immediately. Is this what Patrick Henry was talking about—give me liberty or give me death? It is not about who they are. ''It's not about who they are. It's about who we are.'' Those are the words of my colleague Senator JOHN MCCAIN, bless his heart. Senator MCCAIN is a senior member of the Senate Armed Services Committee. He is a former prisoner of war. He knows what it is all about. And he is exactly right. There is no moral high ground in torture. There is no moral high ground in the inhumane treatment of prisoners. Our misguided, thuggish practice of rendition has put a major blot on American foreign policy.

Now comes this similarly alarming effort to reauthorize the PATRIOT Act, retaining provisions that devastate many of our own citizens' civil liberties here at home. What is happening? What is happening to our cherished America? Let us stop and look and listen and think. What is happening to our cherished America?

Any question raised about the wisdom of shredding constitutional protections of civil liberties with roots that trail back centuries is met with the disclaimer that the world has changed and that the 9/11 attacks are, in effect, a green light. Get that, a green light to trash this Constitution, to seize private library records. Hear that.

Suppose I want to get a book out of the library. Suppose I want to read ''Loves Labors Lost.'' The disclaimer that the world has changed and that the 9/11 attacks are in effect a green light to trash the Constitution, to seize private library records—suppose I want to read about ''A Tale of Two Cities.'' They are going to seize those library records? To search private property—how about that—without the knowledge of the owner? If you want to go in my house without my knowledge, without my wife's knowledge, to spy on ordinary citizens accused of no crime in a manner is a sick—a sick, s-i-c-k, perversion of our system of justice and it must not be allowed.

Paranoia must not be allowed to chip away at our civil liberties. Don't let it happen. The United States of America must not adopt the thuggish tactics of our enemies—no. We must not trash the fourth amendment because the Senate is being stampeded at the end of a congressional session. No.

Government fishing expeditions with search warrants written by FBI agents is not what the Framers had in mind. It is not what Benjamin Franklin had in mind. It is not what Morris had in mind. It is not what James Wilson had in mind. Spying on ordinary, unsuspecting citizens—not with that in mind. Without their knowledge? No. That is not what the Framers had in mind. Handing the Government unilateral authority to keep all evidence secret from a target so that it may never be challenged in a court of law is not what the Framers had in mind.

Yesterday, I believe it was, we heard reports that the military has spied on Americans simply because they exercised their right to peaceably assemble and to speak their minds. What disgrace. What a shame. Today we hear, yes, we hear today that the military is tapping phone lines in our own country without the consent of a judge. Can you believe that? Here in this country, where liberty is supposed to prevail.

Go and ask that Statue of Liberty. Is that what it stands for?

No. Labeling civil disobedience and political dissent as domestic terrorism is not what the Framers had in mind.

Read history. What is the matter with us? Have we gone berserk? Read history. That is not what they had in mind.

Our Nation is the most powerful nation in the world. Why? Because our Nation was founded on a principle of liberty. Benjamin Franklin said ''those who would give up essential Liberty, to purchase a little temporary Safety, deserve neither Liberty nor Safety.'' Our Founding Fathers, intent on addressing the abuses they had suffered at the hands of an overzealous government, established—yes, it did—established a system of checks and balances, ensuring that there is a separation of powers—there is a separation of powers. Read it in the Constitution, article I, article II, article III—a separation of powers so that no one body may run amok with its agenda. These checks are what safeguards freedom for you, Mr. President, and for me and for all others in this land. These checks are what safeguard freedom, and the American people are looking to us—yes, they are looking through those lenses there, they are looking at us, yes. The people out on the broad prairies, out on the plains, out in the valleys, out on the great shores, the frozen wastes of the North Pole, and, yes, that liberty extends everywhere. That American liberty extends everywhere. And nobody may run amok with its agenda.

These checks are what safeguard freedom, and the American people are looking to us—you, and me, Senator, you, Senator, and you, Mr. President—looking to us now to restore and protect that freedom.

So many have died protecting those freedoms. And we owe it to those brave men and women to deliberate meaningfully and to ultimately protect those freedoms that Americans cherish so deeply. The American people deserve nothing less.

Earlier today, the Senate voted to stop a bill that would have allowed the abuses of American civil liberties to continue for another 4 years. Shame. The message of this vote is not just about the PATRIOT Act but the message that the Senate can stand up, the Senate can stand against an overreaching Executive of any party, any party, any party that has sacrificed our liberties and stained our standing before the world.

The PATRIOT Act has gone too far. It has gone too far. Secret renditions should be stopped. Torture must be outlawed. Our military should not spy on our own people.

The Senate has spoken. Let us secure our country but not by destroying our liberties.

Thank Almighty God for this Constitution and the Framers who wrote it, and the Founders of our Nation who risked their lives and their fortunes and their sacred honor. Thank God for checks and balances. Thank God for the Senate, and may it always stand for the right.

I thank all Senators. I again thank the distinguished Senator from Minnesota. I want to tell him that I wish he and his family and loved ones a merry Christmas, a merry Christmas. I thank him.

The PRESIDING OFFICER (Mr. BURR). Under the previous order, the Senator from Minnesota is recognized.

Mr. MCCAIN. Mr. President, parliamentary inquiry: What is the order?

The PRESIDING OFFICER. The Senator is notified that there is no order after the Senator from Minnesota.

Mr. MCCAIN. I ask my friend to indulge me. I ask unanimous consent I follow the Senator from Minnesota.

The PRESIDING OFFICER. Is there objection? Without objection, it is so ordered.

Mr. MCCAIN. I thank the Chair.

The PRESIDING OFFICER. The Senator from Minnesota.

Mr. DAYTON. Mr. President, I want to associate myself with the remarks made by the great Senator from West Virginia, and he is a great Senator. His 47 years of experience here and wisdom have made him an invaluable Member of this body, a leader of this body, an invaluable mentor to newcomers such as myself, and his fidelity to the Constitution, his understanding of history, his understanding of the appropriate relationship of this body, as an independent branch of Government, with the executive branch has been patriotic, courageous, and right.

I thank him for his remarks and for his kind words.

I also want to share the outrage that he expressed, and the previous speaker, the distinguished Senator from California expressed, about these disclosures. Yet another one today, reading in the New York Times about the secret spying on American citizens by the National Security Agency, in contravention of law and in contravention of previous policy under Presidents, Republican and Democrat.

That, on top of the revelations about secret torture camps being conducted, again extra-illegally, by this administration, to the detriment of the great name of the United States of America.

I see that the outstanding Senator from Arizona is on the floor and will follow me with his remarks. To his enormous credit, he has been the champion of putting the United States back on track and assuring that we set the example, the proper example, for the rest of the world in how to conduct itself even under adverse circumstances.

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

(The remarks of Mr. MCCAIN, Mr. LIEBERMAN and Mr. DURBIN pertaining to the introduction of S. 2128 are located in today's RECORD under ''Statements on Introduced Bills and Joint Resolutions.'')

TORTURE

Mr. DURBIN. Mr. President, I salute Senator JOHN MCCAIN. He achieved something this week which is historic. He achieved an agreement with the Bush administration on the issue of torture. That took a lot of hard work on his part. He took a 90–9 vote in the Senate with him to the White House, meeting with the President's representatives.

What Senator MCCAIN was seeking is something fundamental. He wanted to reaffirm in law the fact that the United States would still stand by its word and by its values, that we would not engage in torture even though we are in this new age of terrorism and threat to America. He said: This is less about the enemy than it is about us, who we are and what we stand for.

I can recall during the debate on this issue, Senator MCCAIN took the floor and gave one of the best speeches I have heard in this Chamber, a speech only he could give. As a former prisoner of war, a Navy pilot shot down over Vietnam, he was a victim of torture. No one else in this Chamber, fortunately, can speak to it as he spoke to it. But in speaking to it, he reminded us that torture is not American. It is not a good means of interrogating prisoners or coming up with information to make America safer. There was a lengthy debate about whether his provision would be included in the final legislation. Fortunately, the White House has agreed to include it.

I was happy to cosponsor that legislation. I have been raising this issue for the last several years. I know how controversial it can be. A few months ago I had the spotlight focused on me for some comments made at this same desk. But I believe that the issue of torture is one that we have to face forthrightly.

Last week I was traveling in northern Africa and visited with one of our ambassadors. He is an ambassador to one of the Muslim nations. We talked about the challenges he faces with our involvement in Iraq. He said: The controversy about our involvement in Iraq paled in comparison to the controversy in his country about America's role when it came to torture. He said: It is hard for the Muslim population and Arab populations to understand why the United States would abandon a long-term, multidecade commitment not to engage in torture once they were involved in a war involving Arabs and Muslims. He reminded me—and I didn't need to be reminded—that we issue a human rights scorecard each year from the Department of State. Some of the questions we ask of countries around the world are: have you incarcerated someone without charges? Are you holding them indefinitely? Are you torturing them? If the answers are affirmative, we give them low marks.

Today, obviously, those countries are asking whether the Americans live by the same standards they are imposing on others. JOHN MCCAIN's leadership, along with Senator JOHN WARNER, chairman of the Armed Services Committee, resulted in an important agreement to restate the most basic and bedrock principle, that America will not engage in torture. We will not engage in cruel, inhuman, and degrading treatment of prisoners: First, because it is not American; second, because it invites the same treatment on our soldiers and Americans; and third, because it doesn't work. We have found time and again, if you torture a person they will say anything to make the torture stop. That doesn't give you good information to make America safe. Let me salute Senator MCCAIN for his leadership.

EAVESDROPPING ON AMERICANS

Mr. President, I am troubled by the reports in the New York Times and Washington Post today that this administration, since 9/11, has been engaged in a practice which I thought had been clearly prohibited in America. That is the eavesdropping on individual American citizens, those in America, by major agencies such as the National Security Agency. This all started some 30 years ago during President Nixon's administration. It was an administration which created an enemies list. If your name was on that list, be careful; J. Edgar Hoover would be looking into every aspect of your life that he could. You might be audited by the Internal Revenue Service and you would be carefully watched and monitored.

We decided that wasn't a good thing for any President to do. We made it clear that if you had good reason to eavesdrop on an American in the commission of a crime, involvement in terrorist activity, that was one thing. But to say you could do it with impunity, without any legal approval, that was unacceptable.

Now we find it has been done for several years and several thousand Americans have been the subject of this wiretapping and eavesdropping.

Mr. President, that is a troubling development. It says that this administration has decided when it comes to basic rights of Americans, they are above the law, not accountable; they don't have to go through the courts, don't have to follow the ordinary judicial process. That is something that Congress has to stand up and fight. We have to make it clear that even in the age of terrorism, basic freedoms and liberties of Americans have to be respected.

I hope that as soon as we return from this holiday break the appropriate committees will initiate investigations, determine what has occurred, whether it has gone too far. I sincerely hope, on a bipartisan basis, that my colleagues will rally to once again assert the fundamentals when it comes to the right of privacy in America. We want to be safe in America but not at the cost of our freedom. That, unfortunately, has become an issue because of these most recent disclosures.

Mr. SESSIONS. Mr. President, I remain baffled by the failure today to move forward with the PATRIOT Act. That piece of legislation is exceedingly important. We know for an absolute fact, as Senator KYL and others have pointed out, that terrorist organizations and their movements and activities were not properly discovered by law enforcement because of a failure to share information and other restrictions that fell on those investigators. That has been demonstrated with clarity. In fact, some say had we not had the wall between the CIA and the FBI and they could actually have shared information, we may have even prevented 9/11.

I say this to my friends in this country. Federal agents follow the law. The law said the CIA, which is out dealing with international terrorist groups and others who want to harm the United States, and the FBI, which is given the responsibility of homeland protection and crime enforcement in this country,

were not allowed to share information. And they did not do so. It was part of a governmental reform. I think the Frank Church committee thought they were doing something good, but they ended up creating a wall that prohibited the sharing of information that made it far more difficult for Federal investigators to do the job we pay them to do.

This afternoon, I saw a lady from New York who was touched by 9/11. She wants this bill passed. As a matter of fact, she was shocked that it was not. Why is she shocked? It just passed this Senate a few days ago 100 to 0, by unanimous consent, not a rollcall vote, but unanimous consent, without an objection. It came out of the Senate Judiciary Committee, 18 to 0. We have a host of libertarians on that committee—civil libertarians and libertarians. Chairman SPECTER is very proud of his heritage of civil liberties. All of us take it seriously in that committee, and it came out unanimously.

The bill went to the House, and they passed this very bill that we just blocked. The House passed it with a 75-vote majority even though, in fact, the House had to recede and give about 80 percent of the differences in the House and Senate bill over to the Senate side. The Senate bill was clearly the bill that was the model for the legislation on which we finally voted.

So we go over to the House. They have some provisions and we have some provisions and there is a good bit of discussion over the issues. Finally, a conference report is agreed to. It comes back over here, and all of a sudden we face a filibuster.

The PATRIOT Act will sunset December 31. It will be gone. We will not have the provisions that are in it. Those provisions have played a big role in helping us protect this country from another attack. Who would have thought we would have gone over 4 years since 9/11 without another attack on this homeland? I hope no one thinks that success to date—praise our Creator—has not been driven in large part by effective law enforcement activities by the FBI, the CIA, and other agencies that are charged with these responsibilities.

The compromises reached in the conference committee to work out the differences between the House and Senate bill, according to Chairman ARLEN SPECTER, tilted in favor of the Senate on the disputed provisions by about 80 percent. He said there is not a dime's worth of difference in terms of whether civil liberties were enhanced or not enhanced in the bill that we just voted on and the one that came out of committee 18 to 0 and passed the Senate unanimously.

So why would this Senate and the great Democratic Party, except for two of its members, vote to block us from an up-or- down vote on this? I don't understand. I think it is a serious matter.

There are provisions in the bill that are important. As I have tried to state, as a Federal prosecutor for 15 years nearly, I remain baffled by the concerns over the bill. I remain baffled because of the fact that every provision in the bill has already been a part of Federal law at some point in time and had never been overruled or found unconstitutional. But many of the law enforcement capabilities that the bill delineates and makes clear and actually creates frameworks for already exist in current law.

I knew from the beginning that there was nothing in the bill that was going to be held to be unconstitutional and, indeed, it has not because it was written in such a way that we would not violate the Constitution, and it would be within the principles of our commitment to civil liberties.

All of us are committed to civil liberties. One of our Senators, Mr. BYRD, said we don't need search warrants written by FBI agents. Absolutely we don't. We don't want an investigator being able to conduct a search of somebody without an independent order of a judge, and there is nothing in this bill that does that. We don't change the great protection that you have to have a court-approved search warrant, for heaven's sake. There is nothing in this bill that comes close to that. But these are the kinds of charges that have been made, upsetting people and making them think there is something strange or overreaching about this legislation. It passed with only one negative vote 4 years ago, 90-something to 1.

We need to get our act together on this bill. I urge my colleagues to read the legislation that Senator SPECTER has so carefully written so that anybody can understand what the complaints are, to consider what the Department of Justice has said, to listen to the debate, and actually read the legislation. I am convinced that if colleagues would take a moment to do so, they will find that all of our great liberties are protected and, in fact, we didn't give to FBI terrorist investigators the same powers an IRS investigator has this very day to subpoena bank records that relate to a person who may not have paid their income tax. IRS agents can do that on a daily basis.

I see my colleague. Maybe I have already utilized over 10 minutes. If I have, I will be pleased to wrap up and yield the floor. I am over 10 minutes.

I feel strongly about this mainly because I am so concerned that people have allowed this vote to become a vote on whether one believes in civil liberties or whether one believes in law enforcement.

The bill was written and came out of committee—Senator LEAHY approved it; he monitored its passage from the beginning—so as not to violate the Constitution, not to undermine our liberties, but to make sure that Federal investigators who are trying to keep another 9/11 from happening here have the same powers as IRS agents. And, indeed, we didn't even give them that much power, in many instances. They still have less in some instances.

We need to get our act together on this legislation. We need to move this bill. I don't think it needs to be any weaker. If we come back and water it down and pass it, it would be a mistake.

I thank the Chair, and I yield the floor.

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

Mr. WYDEN. Mr. President, I would like to let the Senator from Georgia propound a unanimous consent request first.

The PRESIDING OFFICER. The Senator from Georgia.

Mr. ISAKSON. Mr. President, I thank the Senator from Oregon. I ask unanimous consent that I be recognized to speak following the speech of Senator WYDEN from Oregon.

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

The Senator from Oregon.

STOPPING INDECENT PROGRAMMING

Mr. WYDEN. Mr. President, as the session winds down this year, I wanted to take a few minutes and bring to the attention of the Senate a new development that I think will be of great interest to millions of parents and families across the country. As the distinguished President of the Senate knows from our service in the other body, parents are greatly concerned that their children are bombarded every day with obscene, indecent, profane, and violent entertainment on television. Parents come up to us as legislators and say: What are you going to do to stop this trash? What are you going to do to keep indecent programming away from our children's eyes and ears?

Of course, we all wish for an ideal world where parents would take the most direct action, which is simply to turn the television set off. That is something that can be done without any Government role. But with parents working—and very often both parents working two jobs each to try to make ends meet—that is not always possible.

So as I began to look at how to solve the indecency problem, I asked what could the Government do in this area to better protect our kids from indecent programming on television? I also asked how to do it in a way without a big government bureaucracy program, a one-size-fits-all approach or where the Federal Government would regulate the actual content of the programs on our television sets.

As I began the search to try to figure out a responsible approach to the problem of indecent programming for children, one of the things I found is one of the cable companies and the big television programmers have set up a special tier of programming for those people who are interested in sports and those people who are interested in movies. I looked at it and found that not only had cable companies done this, it seemed to be working as well.

They found a way to do it that the subscribers like and which was profitable. I said to myself, if that kind of approach works for sports fans and movie fans, why can we not do it for families as well? Why can we not have a special tier of programming that is appropriate for children and works for families, the way we have special programming for sports and movies?

So earlier in this session, I introduced the Kid Friendly TV Programming Act, which would require all video service providers to implement a tier of television programming that is appropriate for children. In my bill, a kids' tier is defined as a group of 15 or more television stations blocked off in a separate channel area with both programming and commercials on it that are purely kid friendly. Parents would be able to subscribe to this block of stations separate from their regular programming, knowing the programming on their television will not carry material that is obscene, indecent, profane, sexual, or gratuitously violent. In introducing this legislation, it seemed to hit the criteria that were most important to me: more wholesome choices for parents and families but not a one-size-fits-all Government mandate. The Government would put the focus where it ought to be, which is to give parents a block or tier of channels separate from regular programming where there would not be material inappropriate for our children.

After I introduced the legislation, Chairman STEVENS and the ranking minority member Senator INOUYE of the Commerce Committee, also made an important effort in holding a roundtable discussion on the problem of indecency, which provided some very valuable exposure for the issue. I want to express my appreciation to both of them for their leadership on this matter.

I also want to express my appreciation to the chairman of the Federal Communications Commission, Kevin Martin, who has discussed this issue with me on a number of occasions. He gave a great boost to this effort several weeks ago at the forum that was held on indecent programming, where he came out and said that a kids' tier of programming would be a responsible, practical way to make sure our Nation's children had more wholesome choices on television.

This week, spurred on by the legislation, the work of Chairman Martin, and the good bipartisan work done by Senator STEVENS and Senator INOUYE, the cable industry took a small step in the right direction when six cable companies, including Time Warner and Comcast, announced they plan to offer a kids' tier of programming in 2006.

Having listened for months to arguments that kids' tier is not going to be profitable and it is not going to be practical, we saw the industry finally come to an understanding that it was time to get serious about this problem.

Yesterday, Time Warner released the details of their kids' tier offer. I was pleased to see that their proposal included G-rated stations that run child friendly content 24 hours a day. However, it is unclear what will be included in the package that parents must purchase in order to purchase the kids' tier. Parents still may have to subscribe to a tier that includes stations that carry foul language, excessive violence, and inappropriate sexual content in order to subscribe to the kids' tier.

That is not what my legislation called for at all. It said we had to have alternatives to the kind of inappropriate programming that is out there now. But in order to subscribe to Time Warner's kids' tier, families might also have to subscribe to service which could include inappropriate programming for children.

I am pleased I can say on the Senate floor that at least some people in the industry have recognized the need for a kids' tier of cable programming across our country. For a long time, whenever I brought this up, they basically said western civilization would end if we have this kind of programming that meets the needs of parents and families. At least we have seen baby steps to address this issue.

What is needed is not different than what parents have at the candy-free checkout lane at the supermarket. Just like parents should not have to take their kids past all the candy to check out at the grocery store, parents should not be forced to surf through obscene programs in order to get to the programs for kids that are appropriate.

In the days ahead I want to make sure that children across the country have an opportunity to have access to this kind of good quality programming, that the kids' tier is implemented properly, and that it does not depend on which community one is in. While a family in Corvallis or Portland in my home State would have a kids' tier available to them because they are served by Comcast, a family in Pendleton or Hood River would not because they receive their cable through a different company. Until all video service providers are offering a kids' tier the job will be incomplete.

My legislation requires that all video service providers institute a kids' tier. I want to make sure families get this option. It is my intent to watch the developments we have seen in the last couple of weeks with respect to Time Warner and Comcast very closely. I am very appreciative of what Chairman Martin has done in this area because he has given great visibility to the question of improving children's programming.

I see Senator PRYOR is in the Chamber as well. He has done excellent work on the Commerce Committee on this issue of indecent programming for children.

If we do not see this kind of tier of kid friendly programming done right across this country, I am going to come back to the Senate and push for my original legislation. The private sector has taken baby steps in the right direction, but there is still a great deal left to do. With millions of kids being exposed to indecent, profane, and violent programming, it is important to do this job right, and the Senate ought to stay at it on a bipartisan basis until it is done.

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

THE TAX CODE

Mr. ISAKSON. Mr. President, today is an anniversary of a day of great renown in American history. Two hundred and thirty-two years ago, on December 16, 1773, a band of colonists boarded three ships in Boston Harbor, dumped the cargo of tea into that harbor, and it became known as the Boston Tea Party. It was a protest of taxation without representation in that great injustice.

I rise today on the floor of the Senate to tell you that injustice still exists in our tax system, not in taxation without representation but in the complexity of our system. Think about it for just a second. It takes the average American filing the simplest form, 1040, 13 hours, the length of 6 college basketball games, just to fill out our simplest form. It takes 3 of 5 Americans the cost of hiring an outside accountant to consult with them just to meet the demands of the current tax system. It means the Tax Code is now 1,685,000 words long, which is exactly 380 times the number of words in the entire Constitution of the United States of America. As all of us on the floor of the Senate know, in months, 17 million more Americans will be brought under the alternative minimum tax, a tax that was allegedly started only to address the taxation of a few that now addresses the taxation of the many.

Earlier today, I introduced legislation to deal with this injustice and create a mechanism for us to forthrightly come before the people of the United States and develop a simpler, fairer, and flatter system of taxation. Simply put, we would sunset the current Tax Code on the Fourth of July, 2008, and command the Congress to take the next 3 years analyzing consumption taxes, progressive taxes, flat taxes, revenues of all sorts, and the effect each has on the economy and economic policy, and then come back to the American people prior to that date with a new, simplified, fairer, flatter tax system, or, if failing to do so, the Congress of the United States would then be forced to vote on this floor to extend the existing system we have and all the injustice that goes with it. Only by creating a deadline, only by being faced with the termination and the loss of revenue would this Congress forthrightly take the due diligence it needs to have the massive overhaul our system needs.

Today, the United States of America in the 21st century is operating under 20th century rules—1,685,000 words

written as long as 100 years ago, when we are looking forward to a future that is brighter and better for all Americans.

I urge my colleagues in the Senate to join me in cosponsoring this legislation and for us to forthrightly set a time when we can truly have a second tea party, this one liberating us from the injustice of complexity and opening the door for simplicity in the American tax system.

Mr. President, I yield the floor.

The PRESIDING OFFICER. The Senator from Kentucky.

VICTORY IN IRAQ

Mr. MCCONNELL. Mr. President, I rise today to speak on Iraq's stunning march toward freedom and democracy and America's efforts to support her progress. I believe, as does President Bush, that it is squarely in our national security interest to help the Iraqis build a thriving and healthy democracy. Democracy is the ultimate antidote to terrorism.

We all know for democracy to flourish we must defeat the terrorists who still linger in Iraq. The mission facing our country is simple: We must defeat them by standing up the pillars of Iraq's democratic institutions so that country can become a hinge of freedom in the greater Middle East.

We know the terrorists cannot defeat us on the battlefield; our military might is absolutely unmatched. We know they cannot defeat our ideas, because when people are given a choice, they will choose liberty and democracy over terror and tyranny every time.

So this debate turns on just one simple question: do we have the will to win in Iraq?

This summer, American intelligence forces intercepted a letter written by Ayman al-Zawahiri, one of the leaders of Al Qaeda, to Abu Musab al-Zarqawi, the leader of Al Qaeda in Iraq. In his letter, al-Zawahiri said that al Qaeda's goal was quite clear: ''Expel the Americans from Iraq.'' He went on to say this:

> . . . [T]he mujahedeen['s] ongoing mission is to establish an Islamic state, and defend it, and for every generation to hand over the banner to the one after it until the Hour of Resurrection . . . The Americans will exit soon, God willing.

So the terrorists' intent is plain. They are not only dedicated to driving us out of Iraq, they are also dedicated to turning Iraq into a breeding ground for terror and anarchy.

We must not let them succeed. That is why I am so concerned about the comments of those who suggest that the battle in Iraq is unwinnable. What signal does that send to the terrorists? What signal does it send to our troops who are putting it on the line every day in Iraq?

Here is what Congressman DENNIS KUCINICH, a leader of the House Democrats' ''Out of Iraq Caucus,'' said: ''It is time for a new direction in Iraq, and that direction is out.'' It's pretty clear where he stands. And he is not an outlier in his party.

The ''Out of Iraq Caucus'' is composed of about 70 Democratic House members. Their goal is America's complete withdrawal from Iraq. Personally, I don't think it makes sense to set an arbitrary withdrawal date, so the terrorists can circle that date on their calendars and wait for us to leave. It seems to me that the better course is to determine our troop needs based on military requirements on the ground, as determined by our military leaders.

House Minority Leader NANCY PELOSI herself has endorsed the immediate withdrawal of our troops from Iraq, and claims that her position represents the majority of her caucus. Leader PELOSI endorsed H.J. Res. 73, a resolution that states:

> The deployment of United States forces in Iraq, by direction of Congress, is hereby terminated and the forces involved are to be redeployed at the earliest practicable date.

So that is the position of the House Democratic Leader, Ms. PELOSI.

Now, the chairman of the Democratic Party, Howard Dean, has said recently the United States can't even win in Iraq. He says, ''The idea that we're going to win this war is an idea that, unfortunately, is just plain wrong.''

Let me say that again. Howard Dean, the leader of the Democratic Party, believes that ''The idea that we're going to win this war is an idea that, unfortunately, is just plain wrong.

That is Howard Dean's assessment of the situation.

Chairman Dean later tried to qualify his comments about the unwinnable nature of the battle in Iraq, but no matter what he says now, it still sounds like ''cut and run'' to me. If it is not ''cut and run'' it is at least ''cut and jog.''

Let me be clear. Proponents of immediate withdrawal certainly have the right to hold that view, and I believe they do so with patriotism in their hearts. But I must respectfully question their judgment.

Our goal should be to achieve victory in Iraq, not merely to pull out based on an arbitrary date on the calendar.

The fact is, we are already on the road to victory in Iraq. The transformation of Iraq from the tyrannical rule of Saddam Hussein to freedom and democracy in just two and a half years is a remarkable success story.

It took us 11 years in our country to get from the Declaration of Independence to the Constitution. And freedom took another giant step forward yesterday with the elections for the first permanent democratic government in Iraqi history.

Of course, the news we have now is still preliminary. But early news reports indicate that 11 million Iraqis went to the polls yesterday, once again staining their fingers with indelible purple ink to signify that they had voted.

That is an overall turnout rate of over 70 percent, compared to 60 percent here a year ago, which was a good turnout for us, higher than normal—70 percent of them going to the polls, proudly holding up their ink-stained fingers, many of them not certain they wouldn't be killed by exercising that right to vote. What is there not to admire about that, an extraordinary performance on the part of the Iraqi people?

As I indicated, that turnout rate exceeds that of their previous election, the constitutional referendum in October. And the turnout rate for that referendum exceeded the rate for the election prior to that, for the interim government in January. Most important, turnout among Sunnis yesterday appears to have been particularly robust, as with each election Sunnis have gotten more involved in the democratic process.

We may not know the results of the elections yet, but we know the Iraqi people are the winners. They have repeatedly defied the terrorists by voting for democracy over tyranny. Yesterday's elections have created a 275-member council of representatives, who will govern Iraq with the consent of the people.

It is odd to me that at such a moment of triumph in that country, there are still those who call for America to stop short. Granted, not everything in Iraq has gone just as we would have wanted it to.

Unfortunately, such is the nature of military conflict. We've all heard it said that no battle plan survives the first shot. But there can be no doubt that tremendous progress has been made. Maybe it would be a good idea to review the progress that has been made in Iraq in the last two-and-a-half years.

Back during the Saddam Hussein era—when he was in power from 1979 to 2003—in that period, over 4,000 political prisoners were summarily executed, 50,000 Kurds were killed, 395,000 people were forced to flee Iraq, there were no free elections whatsoever, no free newspapers, and Hussein, of course, stood above the law.

What has the situation been since 2003, since the fall of Saddam? Iraqis are now innocent until proven guilty, and Saddam himself is being given a fair trial, something he gave no one.

Seventy-five Kurds were elected to the interim Parliament, when during Saddam's regime, 50,000 of them were murdered. Over 270,000 people repatriated, when during Saddam's regime, 395,000 people left the country; 9.8 million Iraqis freely voted on the Constitution. There are over 100 free newspapers in Iraq. They have a robust free press there, and Hussein, as I suggested earlier, is now on trial, being given the kind of trial he gave no one.

So much has improved, much is left to do, but now we are heading in the right direction. Iraqis are feeling positive about the direction of their country as well. According to an ABC News study, 77 percent of Iraqis think the security situation in the country will be better in a year. Two-thirds of them expressed confidence in the Iraqi Army and the Iraqi police.

These people are on the ground in Iraq every day. They are living in the midst of the war on terror. I think we should give their opinions great weight.

Look at all the progress that has been made. The 24-year reign of terror is over, and a new democratic, free Iraq is emerging. Voter turnout in their national elections yesterday was reportedly very heavy, as I indicated. So Iraqis are optimistic about their future. They think the fight against the terrorists is worth fighting. They think democracy is worth fighting for.

We should stand by them and do no less. We need to complete the job, and our strategy is to stay and win—not cut and run.

I yield the floor.

The PRESIDING OFFICER. The Senator from Arkansas.

TAX RELIEF FOR AMERICANS IN COMBAT ACT EXTENSION

Mr. PRYOR. Mr. President, I rise today to commend and thank my colleagues for including a 1-year extension of the Tax Relief for Americans in Combat Act as part of the Gulf Opportunity Zone Act of 2005. This measure corrects a discrepancy in the Tax Code that penalizes certain service men and women serving in combat situations.

To give my colleagues a bit of history on this, in 2003, I approached the distinguished chairman of the Senate Finance Committee, Senator CHUCK GRASSLEY, and the ranking member of that same committee, Senator MAX BAUCUS, and asked them to join me in an effort to get a fresh look at the overall picture of how our Tax Code treats our military. I was very pleased when they agreed to work with me, and was delighted to jointly request an expedited study by the Government Accountability Office. It was an honor for me to work with them. I also must say their staff have been nothing but a delight to work with throughout this process.

The GAO made their study, and they had some interesting findings.

One of those findings was especially important and necessitated immediate attention. In a nutshell, what they found is service men and women who were serving in combat zones and receiving nontaxable combat pay were not able to also take advantage of the earned-income tax credit and the childcare tax credit. Imagine that. The result was thousands of our men and women serving in combat—in places such as Iraq, Afghanistan, and other places around the globe—were seeing a reduction or the elimination of their earned-income tax credit or child tax credit and, in effect, losing money. In other words, the Tax Code has the impact of penalizing them for serving in combat.

The GAO report characterized this as an unintended consequence. I say it is plain wrong. I was pleased to introduce legislation to try to fix this glitch. Back in 2004 we passed Tax Relief for Americans In Combat Act. The bill allowed men and women in uniform serving in combat to include combat pay for the purpose of calculating their earned-income and child tax credit benefits. In other words, they were able to continue receiving their rightful combat pay exclusions while also being able to take full advantage of other tax credits. However, what we passed in 2004 expires at the end of this year. So I am pleased today's action in effect extends the legislation for one more year.

I thank, again, Senator MAX BAUCUS for his leadership in helping extend it for another year. Also, I thank Senators JOHN KERRY and BARACK OBAMA for their leadership in taking up the fight when someone saw the opportunity to do so, to ensure our men and women in combat are fairly treated.

The urgency of this situation is highlighted especially when you focus on our troops whom it affects. We are talking about troops in combat for more than 6 months. They are at lower pay grades and tend to be married with children. They have little or no savings or spousal income. The GAO suggested the amount of tax benefit loss could be up to $4,500 for enlisted personnel and $3,200 for officers. That is real money. That is make-or-break money for a lot of these people. They are already under enormous stress.

I am glad we could come together in this bipartisan fashion and extend this for another year. The bill corrects the problem and lets our troops who are risking life and limb for us know that while they are away fighting for us, we are in the Senate fighting for them and for their families.

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

The PRESIDING OFFICER. The clerk will call the roll.

The assistant legislative clerk proceeded to call the roll.

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

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

Mr. BURNS. Mr. President, I inquire of the Chair, are we on the PATRIOT Act or what is the order?

The PRESIDING OFFICER. The Senator is correct, we are currently on the PATRIOT Act.

Mr. BURNS. I ask unanimous consent I be allowed to speak for up to 15 minutes—and I don't think it will be that much—as if in morning business.

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

IRAQ

Mr. BURNS. Mr. President, I heard the words of our assistant leader on the majority side and wanted to come to the Senate. These words may get lost in the swirl of the times with the holidays, but yesterday was truly a historic time not only for the people of Iraq, but a historic time for the peace process in the Middle East.

There was not a doubt in anyone's mind around the world what that was about yesterday. They not only elected permanent representation in their government that will move on and try to finish their constitution, but it was a symbol of a people who voted for peace, security, and a new economic future. That is what that was all about yesterday.

I congratulate the people of Iraq who, with a great deal of courage, turned out and stood in lines and voted their will. This is what this whole exercise has been about.

I leave a message with not only this Congress but to some who fail to see how much hope was on display yesterday: there is hope for the future. Now we have little girls going to school in Iraq. Hope for families, that they can participate in a republican form of democracy, and to change the economic culture of those people who live in Iraq.

Think of the possibilities. The success in Iraq also has done another thing that will change not only Iraq, but it will change the whole area. For the first time since World War I there will be a transportation and communication corridor that will change the economic culture from Tel Aviv to Kuwait City. Think of what that does. It puts Amman back on the trade route, so to speak. King Abdullah, the leader of Jordan, understands this. And as he looks at that, it puts Amman back on the trade route.

But what about the future? Anyone who has visited Iraq has seen this, probably in Baghdad, or wherever. But I will tell you what this farm kid has seen on his visit to Iraq. When we were in Mosul we saw dry land, farming, good soil. There are two great rivers with irrigation systems from both of them. I saw the kind of dirt it takes in which to build an economy.

Let's don't talk about gas or oil. Let's talk about the very industry that contributes more to the GDP of any country in the world, and that is agriculture. They have the ability to be the breadbasket of the Middle East. As you know, most of the Middle East is desert. Most of it has soil that is very thin, and there are not many nutrients in it. And even where you find those areas where they have it, it is in need of water. Water isn't there.

I looked at the north of Israel one time, and I understood the problem there. The problem there has to do with water, the ability to irrigate out of the Jordan River. You have two great river systems in Iraq.

The next step in this budding new freedom is the cornerstone of freedom, and that is land ownership, making people productive, growing renewable resources, providing for your family, but also providing a great export out of Iraq and becoming a trading partner with their neighbors.

We cannot change the ethnic culture, nor can we change the Islamic culture, but we can change the economic culture to where more people of that society participate in the economic well-

being of their country. Just think of the possibilities and the hope it brings to the next generations of those folks.

If you can find something to export—and I will tell you, I look at Jordan. There is a country that is not very wealthy. The only thing they have to export is potash, and the world can only use so much potash.

But they understand communications and transportation. So there is great hope there now. There is the hope of land ownership, the hope of participation in supplying food and fiber not only for their own people, but to export to other neighboring countries. That corridor is now established with the free movement not only of people, but also goods and services.

That corridor will widen. It will effect the way people do business in Syria and the way they do business in Iran. It will change even how they do business in Egypt. The Nile Delta, a very fertile delta, now will have some competition in the food business.

Also, it will have possibilities for our country when those economics take hold. And it is not going to happen by next week, or next year, or maybe not even for the next 5 years. But you are going to see it happen because of this taste of freedom, land ownership, independence, and to be able to participate in their own government, and, yes, even in their own provincial governments.

So the possibilities of peace and stability and economic advancement have never been greater than at any time in history since World War I. Yet there will be those who say we should not be there helping freedom-loving people achieve the same dream, having the same hopes we have for our next generation, our children, and our grandchildren.

Hope is eternal. Now they have a future, a future they have never had since almost 100 years ago. And the impact of that will spread throughout the Middle East. It will happen. The Presiding Officer comes from an agricultural State with land ownership, productivity, and exports. My good friend from Iowa, my goodness; they are the breadbasket of the world. They can grow more in Iowa with what falls out of their pocket accidentally than we can, on purpose, in Montana, I will tell you. What a great and blessed State, and the same for the State of my friend from Texas, who is on the floor.

But what makes it operate is land ownership and participation in the economy. Then the terrorists have nobody to recruit because there is hope.

Our Marines, our Army, and our Air Force paid a heavy price because they, too, believe this legacy of freedom, to be passed on from one generation to another, is worth dying for.

I had a lady say: ''If you wanted to take a poll in Iraq, if you polled our military people, that poll would say they don't want to be there.''

I said: Well, if you took a poll in the English Channel on June 6, 1944, they didn't want to be there either. What was that for? Countries had been overrun by a tyrant who brought nothing but tyranny. And they were an enemy of this country and our ideals and our principles.

They have those principles already. But what they have too is hope. And we have to nurture that hope because they cannot only feed themselves, with their renewables grown from Mother Earth, they can become a powerhouse in the Middle East for commerce. Just think of that corridor. Just think of the possibilities of changing an economic culture that will run from Tel Aviv to Kuwait City, and then you tell me: Was it worth it?

This President understands a vision of hope for freedom-loving people everywhere. And what it offers to their citizens is beyond some folks' comprehension. Freedom is not free. Hope is not free. There must be sacrifice.

Yesterday, those folks lined up by the droves to take advantage of changing their lives, sending a strong message to the rest of the world: Terrorists, you are not welcome here anymore.

That is the greatest enemy terrorists have, when the fires of freedom burn in the hearts of a people in a line where they stand, where they vote.

That is the vision I have for the Middle East. It is very clear. It is clear that with that reform comes land ownership, irrigation systems, dry land farming, and participation in the world of commerce. Not only in that, but in goods and services also. Iraqis are a very talented people, a people who have that fire of freedom in their heart. We wish them well, and we stand beside them as that fledgling democracy, that republican form of government, gets its kick-start. And it really got a kick-start yesterday. We wish them well. We congratulate them for their courage to stand up and be counted.

I yield the floor.

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

The PRESIDING OFFICER. The clerk will call the roll.

The assistant legislative clerk proceeded to call the roll.

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

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

UNIVERSITY OF NORTHERN IOWA PANTHERS FOOTBALL TEAM

Mr. HARKIN. Mr. President, today I am here to congratulate the University of Northern Iowa Panthers football team and wish them the best of luck as they prepare to take on the Appalachian State Mountaineers today at 8 p.m. in Chattanooga, TN, for the 1–AA national championship. This is truly a historic occasion, as this marks UNI's first appearance in the national championship contest. In addition, UNI has the opportunity to be only the second Iowa NCAA school to win a national title in football. Central College in Iowa won the 1974 division III championship.

This has been a season full of highs and lows for the Panthers. Starting the season at 4 and 3, the outlook looked kind of bleak, but the team did not get discouraged. They did not give up. Instead, they rattled off seven straight wins. As a result of their tenacity and determination, the Panthers find themselves tonight in the championship game.

In 5 years, head coach Mark Farley has won 44 games, at least a share of three conference championships, and he has led the Panthers to three playoff appearances. Under his leadership, the Panthers have again become a national power in 1–AA football. And Coach Farley is a graduate of UNI. He was a member of the first UNI football team to play in the national semifinals. Twenty years later, after 10 playoff appearances and 5 semifinal appearances, he has led his alma mater to their first championship game.

Yesterday, the Des Moines Register ran a story titled ''Panther Football A to Z.'' The article tells the story of the team's season, beginning with the letter A for adversity. As I mentioned, the Panthers record stood at 4 to 3, but after seven consecutive wins, which included five late-game comebacks, they have earned the trip to Chattanooga and the adoration of their fans. Much as linebacker John Herman stated in the article:

> Text messages, e-mails, phone calls—it's crazy to see how many people are excited for us to get here.

The article concludes with the letter Z for zenith by quoting athletic director Rick Hartzell, who said:

> There's never been a better time to be a Panther.

I congratulate the young men, their coaches, and the University of Northern Iowa for their tremendous season and wish them the best of luck tonight. I will be watching on ESPN2.

I ask unanimous consent that the text of the Des Moines Register article be printed in the RECORD.

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

(See exhibit 1.)

Mr. HARKIN. Mr. President, I see my friend, RICHARD BURR, the outstanding Senator from North Carolina, on the floor. North Carolina, of course, is the home State of that great school, Appalachian State. I know that after their defeat tonight under the paws of the Panthers, it will continue to be a great school and a great football team.

My good friend and I have made a little wager on the game tonight: six North Carolina pork chops versus six Iowa pork chops. You see, I say to my friend, just as Iowa is No. 1 in pork production, and North Carolina is No. 2 in pork production, after tonight, Iowa will be No. 1 in 1–AA football, and North Carolina will be No. 2 in 1–AA football.

So, again, I look forward to dining on those great North Carolina pork chops.

I ask my friend, please, would you throw in some of that North Carolina barbecue sauce with them?

I yield the floor.

EXHIBIT 1

[From the Des Moines Register, Dec. 14, 2005]

PANTHER FOOTBALL A TO Z

(By Rob Gray)

CHATTANOOGA, TN.—It's hard to describe, let alone explain.

Northern Iowa's stunning run from NCAA Division I–AA football playoff longshot to championship game participant ends Friday with a first-ever title hanging in the balance. Only Appalachian State stands in the way.

''I'm sure after the season's over I'm really going to be kind of in awe, but right now we're trying to get focused on the game, trying not to get caught up in the moment,'' said Panther quarterback Eric Sanders. ''But in the offseason, I know I'm going to reflect and be pretty proud and go like, 'Wow. This really did happen.' ''

The No. 7 Panthers' transcendence of high-profile injuries, daunting fourth-quarter deficits and taxing road trips may defy logic, but it can be loosely quantified, or encapsulated, within a quick spin through the alphabet. So it's on to Chattanooga, via the ABCs:

A is for Adversity. The Panthers (11–3) once stood 4–3, but seven consecutive wins followed, including five late-game comebacks, and overcoming obstacles has kindled adulation.

''Text messages, e-mails, phone calls—it's crazy to see how many people are excited for us to get here,'' linebacker John Hermann said.

B is for Balance. Northern Iowa running back David Horne has rushed for 1,039 yards and 16 touchdowns. Quarterback Eric Sanders has thrown for 2,748 yards and 23 touchdowns.

C is for Coaching. Mark Farley suffered along with teammates and fellow coaches in five Panther losses in the semifinals. This season, he helped orchestrate a breakthrough. ''We've got the opportunity to represent our school, but also our state,'' Farley said.

D is for Defensive ends. Appalachian State (11–3) features two standouts at the position. Jason Hunter and Marques Murrell have combined for 22 sacks.

E is for Extra credit. Northern Iowa kicker Brian Wingert has drilled three consecutive game-winners.

F is for Finish. The Panthers have outscored foes, 63–14, in the fourth quarter over their seven-game win streak.

G is for Grounded. Northern Iowa's defense has allowed big games from highly rated quarterbacks Erik Meyer, Ricky Santos and Barrick Nealy in the postseason, but kept them from winning.

H is for History. Both Northern Iowa and Appalachian State make their first title-game appearances.

I is for Interception. Matt Tharp's pick of Nealy preserved Friday's 40–37 overtime win at Texas State.

''(He) made a good play with a cast on his hand,'' fellow defensive back Tanner Varner said. ''It was just amazing.''

J is for Jeff Bates. The Indianola senior center eased into the starting role when offensive line anchor John Schabilion suffered a season-ending injury.

K is for Krystal. Fans traveling to Chattanooga will encounter this southern version of White Castle.

L is for Linebackers. Northern Iowa's Darin Heideman and Brett Koebcke highlight a defense that gets stingy at precisely the right moment. Koebcke is questionable for Friday, though, with a high ankle sprain.

M is for Mountaineers. As in Appalachian State's nickname. The team has lost just once to a I–AA opponent this season.

N is for National. ESPN2 will broadcast a Panthers football game to a coast-to-coast audience for the second consecutive week.

0 is for Overtime. The Panthers stand 2–0 in overtime games, beating Western Kentucky, 23–20, in double overtime and Texas State. ''We've definitely caught some breaks to be at this point, but you kind of have to to get this far,'' Sanders said.

P is for Pecan Bowl. Way back in 1964, the Panthers won this Division II bowl game, 19–17, over Lamar Tech at Abilene, Texas.

Q is for Quarterback(s). As usual, the Panthers will face a good one—whether it be Richie Williams, who could be out with a ruptured ligament, or backup Trey Elder, who led the Mountaineers to last week's 29–23 win over Furman.

R is for Receivers. Justin Surrency leads the Panthers with seven touchdown catches—including an end-zone grab in four consecutive games. Patrick Hunter and Jamie Goodwin furnish downfield speed. Brian Cutright excels at tight end.

''There's no doubt in this team at any time,'' Cutright said. (see item ''A'')

S is for Kevin Stensrud. The defensive lineman form Lake Mills has battled countless injuries to reach his final game.

T is for Two-point conversion. Surrency's leaping catch to tie the game at Texas State came amid three defenders. ''I had just enough height on it, and not just enough height on it to get it over the first guy and in between the other two guys,'' Sanders said of the pass.

U is for Upsets. Northern Iowa has topped three teams this season ranked No. 1 at some point—with two wins on the road.

V is for Variety. Sanders has hit nine or more receivers in five of the past seven wins.

W is for Waffle House. This franchise dots the Tennessee landscape like Casey's General Stores in Iowa.

X is for X-Factor. Jason Breeland provides a spark in the Panther backfield and at wideout.

Y is for Yards. Expect plenty. The Panthers average 444 yards in the playoffs; the Mountaineers average 437.

Z is for Zenith. As athletic director Rick Hartzell said, there's never been a better time to be a Panther.

''For our type of institution, we've got the best athletic program in the country,'' he said.

The PRESIDING OFFICER. The Senator from North Carolina is recognized.

Mr. BURR. Mr. President, we will learn tonight that being No. 1 doesn't mean that you win, and being the largest doesn't mean you are the best. In fact, North Carolina pork chops are better than Iowa pork chops, and North Carolina football is, in most cases, as good if not better than Iowa football.

I commend the Northern Iowa Panthers. They have had a miraculous season. They deserve to be in the championship game based on how they performed in the second half of the season.

Appalachian State was ranked fifth by the Sporting News and fourth by ESPN/USA Today in the I-AA polls. Appalachian has a record of 11–3, and they have reached the I-AA semifinals now for the third time. They did it in 1987, 2000, and now in 2005. But they have never reached the championship game until this year.

This is a magical year for Appalachian State. Over 10,000 of my constituents will make the trek today to Chattanooga, TN, for tonight's football game. I remind my good friend, Senator HARKIN, that almost all of the tickets turned back in by the Northern Iowa Panthers were purchased by North Carolina constituents who will be at that game.

Appalachian State advanced to the championship game with a 29–23 victory over rival Furman University. Appalachian took the lead with 2 minutes 17 seconds left, with an 11-play, 67-yard drive led by backup quarterback Trey Elder, who was filling in for a starting quarterback Ritchie Williams. They held off a last-minute threat and picked up a fumble by Furman and ran it back to Furman's 1-yard line, where that game ended.

Two of the team's three losses were to I-A teams—Kansas University and the tenth-ranked LSU Tigers. The Charlotte Observer named the Mountaineers the most successful college football program in the State over the past 20 years.

Among their famous alumni are Dallas Cowboys linebacker Dexter Coakley, and former Redskins runningback John Settles.

Coach Jerry Moore is the winningest coach in Southern Conference history, with a string of 16 winning seasons in 17 years, with a record of 139–67. This is his 13th playoff appearance as a head coach. Coach Moore perfected his coaching skills as an assistant under our colleague in the House, Congressman Tom Osborne.

When Appalachian wins tonight's showdown, it will be the first time a university from the State of North Carolina has ever won a national football championship.

Senator HARKIN doesn't need to take my word for it or the sports reporters or the commentators opining on the success of Coach Moore and his Mountaineers. Senator HARKIN needs to go no further than his own backyard to find someone who can attest to Jerry Moore's ability to prepare the Mountaineers for tonight's game. That is because Coach Moore counts as one of his closest friends a man synonymous with Iowa football—former Hawkeyes head coach, Hayden Fry, with whom Jerry Moore started his coaching career at SMU.

Mr. President, Appalachian State University was started as a teachers college in 1899. Its enrollment is slightly over 14,000 students. It is the sixth largest State university in our university system in North Carolina. It has one of the highest graduation rates of student athlete football players in the State, and a few years ago it ranked only behind Duke in that distinction.

I take this opportunity to congratulate the Northern Iowa Panthers. I congratulate Chancellor Peacock and Coach Moore but, more importantly, these two teams who have reached the final championship game tonight.

Tonight there will be only winners; there are no losers. Tomorrow there

will be one loser, and that will be my colleague from Iowa as he prepares to send those pork chops to North Carolina.

With that, I yield the floor.

Mr. HARKIN. Mr. President, I suggest the absence of a quorum.

The PRESIDING OFFICER. The clerk will call the roll.

The assistant legislative clerk proceeded to call the roll.

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

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

CORD BLOOD LEGISLATION

Mr. HARKIN. Mr. President, yesterday afternoon, the majority leader offered a unanimous consent request to take up and pass, without any amendments or any further action, H.R. 2520, a bill to collect cord blood for use in therapies for various kinds of blood diseases. I objected to that unanimous consent request after quite a bit of talk on the floor.

As I explained yesterday, I support this bill. I am a cosponsor of this bill. In fact, I joined with Senator SPECTER 2 years ago to create the National Cord Blood Stem Cell Banking Program by including $10 million for that purpose in the fiscal year 2004 Labor, Health and Human Services, and Education appropriations bill, of which I am ranking member. We have been funding that program ever since. So I have been in the lead in championing cord blood therapies by getting the program funded and keeping it funded.

Nevertheless, I objected to the unanimous consent request because I believe the Senate should take up the cord blood bill at the same time we take up H.R. 810, which is the Stem Cell Research Enhancement Act.

That is what the House did, and that is what the House passed. The House approved both these bills on May 24 of this year, and we have been waiting and waiting and waiting and waiting in the Senate to do the same thing. We keep hearing from the majority leader that he wants to bring up H.R. 810. In fact, in what I thought was a very courageous speech the majority leader gave on July 29, he said he would vote for H.R. 810. But we can't seem to bring it up on the Senate floor.

Members on the Republican side keep coming up with new bills to try to confuse things. They want to vote on five or six or seven bills, some of which have absolutely nothing to do with stem cell research.

So a number of us on both sides of the aisle formed a bipartisan group to do what we could to try to bring both these bills, the same two the House passed, H.R. 810 and H.R. 2520, and do what the House did—bring them up, debate them, and pass them.

When this unanimous consent request was then offered by the majority leader yesterday, I was on the floor. I had not checked with all the other people who had been involved in that effort, so I objected because I felt strongly that the two ought to be together.

I said to the majority leader last night that I would take a look at it today and go over it with my staff. I have decided, after going over it and looking at it, to lift my hold—I can only speak for myself—but I have decided to lift my hold on H.R. 2520.

One of the reasons I am doing so is because, quite frankly, the bill doesn't accomplish anything that we are not already doing or about to do. In 2002, under the direction of the Appropriations Subcommittee on Labor, Health and Human Services, Education and Related Agencies, of which I am ranking member and Senator SPECTER is the chair, the registry on bone marrow units had to start including cord blood units as well.

Last year, there was a 24-percent increase in the number of cord blood units in the registry. This is because Senator SPECTER and I put this in the bill in 2003. Then, in fiscal year 2004, I helped secure $10 million to create the National Cord Blood Stem Cell Banking Program. Our subcommittee has appropriated $19.8 million in the last 2 years for that effort. That is for the banking of cord blood.

Yesterday, my colleague from Kansas, Senator BROWNBACK, said that ''more kids will die if we don't take up the cord blood bill.'' That is simply not true. Cord blood units are being collected and saving lives as we speak today because of the funding that we appropriated through the Labor, Health and Human Services, Education appropriations subcommittee. Let's be clear, that money is there. We appropriated it. It is doing its job right now.

What will help save lives and help with cord blood is if Republican conservatives would stop cutting funding for the National Cord Blood Stem Cell Banking Program that we put in a couple of years ago.

In the Senate version of the fiscal year 2006 Labor-Health and Human Services appropriations bill, under the leadership of Senator SPECTER, we included $9.9 million for cord blood banking. To hear the talk last night, one would think we didn't have any money. We put $9.9 million in the bill. Guess what. The House had zero. The conference committee cut our $9.9 million down to $4 million. That means 3,900 fewer units of cord blood will be collected under the fiscal year 2006 appropriations bill than in last year's bill.

I would hope my good friend from Kansas will come to the floor and implore his colleagues not to go along with the Labor-Health and Human Services appropriations bill and get that money back in there, but I didn't hear anything said about that.

The cuts to cord blood banking do not stop at the $4 million level. We are told that when the DOD appropriations bill comes back, there will be a 1-percent, across-the-board cut for every Federal program. First, the cord blood funding is cut from $9.9 million to $4 million. Now, it is going to get another 1-percent cut for good measure.

As I said, if Senators want to do more for cord blood banking, they ought to increase the funding, at least not cut it in the Labor-Health and Human Services appropriations bill. But it is being cut. It shouldn't be cut. We put the money in there. So if my colleagues feel strongly about banking cord blood and using that cord blood to save lives, they ought to be out here demanding that we not cut it from what we put in the Senate bill. But I have not heard one person come on the floor and take that up and say: No, we are not going to agree to those cuts.

If Senators want to do more for cord blood banking, they should increase the funding, not cut it. But if Senators want to go ahead and pass H.R. 2520, fine, I have no problem with that. There is no harm in passing language that authorizes work that is already being done by the Appropriations Committee. At least Senators who come out and talk at least ought to thank Senator SPECTER for taking the lead on this.

There is another reason why I am lifting my hold. When we debate H.R. 810 next year—let me put it this way. The majority leader has kept saying he wants to make sure we bring up H.R. 810.

Senator HATCH from Utah said we are going to bring up H.R. 810. We are going to have that debate; we are going to vote on it. Well, when we bring it up next year and debate it, it will be crystal clear who supports medical research and who does not. The question will be very simple: Are my colleagues for stem cell research or are they not?

Cord blood transplants, while enormously beneficial to people with certain blood diseases, are no substitute for embryonic stem cell research. Cord blood cannot do a thing for people with Parkinson's, ALS, juvenile diabetes, Alzheimer's. These are the things we can address with embryonic stem cell research.

So I wanted to make it very clear today, No. 1, that I have taken off my hold on the unanimous consent. They want to bring it out again. Secondly, Senator SPECTER and I have taken steps in the Appropriations Committee both to put the money in there but also to set up the registry. We have already set up the registry. There was some talk yesterday that maybe there is not a registry out there. Of course there is a registry. As I said, it went up 24 percent last year.

H.R. 2520 basically authorizes what we are already doing, anyway. That is fine. But I implore my colleagues who are interested in this, as I am, come out and talk about the funding. Talk about the 3,900 fewer babies, young people, who will not get cord blood because of the cut in funding from $9.9 million now to less than $4 million. Let us hear some talk about that rather than being here and passing an authorizing bill, which does not do one single

thing more than what we are doing already.

What it does is make sure the funding is there for the registry and to collect the cord blood and to bank it so that people and young people who have these terrible diseases can get the cord blood to help them.

I hope we do not make these cuts in the Labor-HHS appropriations bill. It is there, but we should not cut it. And if they do, I will have more to say about it next year when we return in January and February. I hope we can bring up H.R. 810, have a good debate on it, and let us vote it up or down, as the House did, and send it on to the President so we can get on with the vital research that is needed on embryonic stem cell research.

I conclude with this: There are some stories in the paper today—there were a few yesterday—a front-page story today about a South Korean research doctor and the fact that he may have—I do not know all the facts—falsified some stem cell lines. There are indications, at least in my reading of the medical journal, there is some reason to believe he actually did do that, that it was falsified. Then I heard some comments such as, well, see, there is the problem with stem cell research.

That points out the necessity for us to authorize it, to have the National Institutes of Health supervise it, have jurisdiction over it, so that it is done in an ethical way, where we can monitor it and make sure we do not have rogue elements riding off doing their own thing, so we have standards by which we can measure stem cell research, so we can have legitimate, ethical, moral guidelines which researchers can follow, and we can know who is doing the legitimate good work and know who the outliers are.

The fact that this story has come out today makes it even more imperative that we pass H.R. 810 and we have National Institutes of Health jurisdiction oversight over this kind of research.

I yield the floor.

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

The PRESIDING OFFICER. The clerk will call the roll.

The assistant Journal clerk proceeded to call the roll.

Mr. WYDEN. Mr. President, I ask unanimous consent that the order for the quorum call be dispensed with.

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

FEDERAL TRADE COMMISSION NOMINATIONS

Mr. WYDEN. Mr. President, in the final hours of this session of the Senate, the Senate is going to approve two nominees to the Federal Trade Commission. I take a few minutes tonight to describe why I want to be on record tonight against the nomination of both these individuals.

When it comes to energy, the Federal Trade Commission essentially is out of the consumer protection business. Well over a year ago, I released a report documenting the Federal Trade Commission's campaign of inaction when it comes to protecting our consumers at the gas pumps. My report documented how the Federal Trade Commission has refused to challenge oil industry mergers the Government Accountability Office says would raise gas prices at the pump by 7 cents a gallon alone on the west coast.

My report also documented how the Federal Trade Commission failed to act when refineries had been shut down or to stop anticompetitive practices such as redlining and zone pricing. Since then nothing has changed.

Despite what we saw recently—record high prices for consumers, and record profits by major oil companies—what we have seen is a record level of inaction by the Federal Trade Commission on behalf of energy consumers.

In the last few months, when we saw the price of gasoline soar to an all-time record high, the Federal Trade Commission was invisible. As far as I can tell, the Federal Trade Commission failed to take any action at all in the wake of the hurricanes in the gulf that sent the price of gas skyrocketing to over $3 a gallon across the country.

If you do a Google search on FTC and gasoline prices, nothing at all comes up to indicate that the Federal Trade Commission has taken any action on behalf of energy consumers. What you do find are statements by the Chair of the Federal Trade Commission arguing against giving the agency additional authority to protect consumers against price gouging at the pump.

For example, the Federal Trade Commission Chair recently made the statement opposing an effort here in the Senate to have a price gouging law because ''they are not simple to enforce and they could do more harm to consumers.''

The fact, however, is a number of States do have price gouging laws. Two State attorneys general testified at a joint hearing recently here in the Senate that these laws are, in fact, beneficial.

In her testimony before a joint Senate hearing last month, the Chair of the Federal Trade Commission, Debra Majoras, described what I believe to be an astoundingly serious theory of consumer protection when she essentially said there is no need for a Federal price gouging law no matter how high the price of gasoline goes. The argument was by Ms. Majoras that gasoline price gouging is a local issue even if the price gouger is a major multinational oil company.

FTC officials also testified before the Congress that the agency has no authority to stop price gouging by individual companies.

Despite this clear gap in the agency's authority, the agency has refused to say what additional authority it needs to go after price gouging, and others have pressed them to do for years.

There are unquestionable efforts in the private marketplace to exploit consumers, and it didn't start with Hurricane Katrina. As the Wall Street Journal documented recently, gas prices for much of this recent period have increased twice as fast as crude oil prices. Clearly, a number of oil companies are not simply passing on higher crude oil costs but are also adding substantial increases to the cost of gas above and beyond the higher cost of crude oil.

Since the early 1970s and for much of this year, there has never been the kind of disparity between increases in the price of gas and increases in the price of crude oil. This was not seen even in the days of the long gas lines following the OPEC embargo.

Over the past 30 years, gasoline prices never rose more than 5 percent higher in a year than the cost of crude increase. But in the past year, gas price increases outpaced crude by 36 percent. After Hurricane Katrina, the price difference soared even higher to 68 percent.

Further evidence of price gouging could be found in what happened on the west coast immediately following Hurricane Katrina, when prices surged 15 cents per gallon overnight. For years, oil industry officials, the Federal Trade Commission, and others have maintained that the west coast was an isolated gasoline market from the rest of the country. West coast supplies were not affected by the hurricanes. The west coast gets almost none of its gas from the gulf. If the west coast was an isolated market, as the oil industry has claimed for years, then Katrina was not a justification for jacking up gas prices on the west coast immediately after the hurricanes.

The Federal Trade Commission is the principal consumer protection agency in the Government. It is the Federal agency that can and should take action when gasoline markets go haywire as they did after the hurricanes. But instead of action, what we have repeatedly seen were excuses.

In the past, the Federal Trade Commission often claimed that it was studying the problem or monitoring the gasoline markets as an excuse for inaction on gas pricing.

Recently, the Federal Trade Commission's campaign of inaction has even extended to the studies that the agency does. The Federal Trade Commission chair testified last week that a study of gas price gouging that Congress required the FTC to complete by this month would not be ready until next spring. In effect, the campaign of inaction is now approaching the point of paralysis where the agency won't even deliver promptly on commitments that it has made to study the issue.

The agency has continued its program with inaction on behalf of gasoline consumers despite the findings by the Government Accountability Office that the agency's policies are raising prices at the pump.

In May of 2004 the Government Accountability Office released a major study showing how oil industry mergers and the Federal Trade Commission

allowed to go through in the 1990s substantially increased concentration in the oil industry and increased gas prices for consumers by as much as 7 cents per gallon on the west coast.

Specifically, the Government Accountability Office found that during the 1990s the Federal Trade Commission allowed a wave of oil industry mergers to proceed, that these mergers had substantially increased concentration in the oil industry, and that almost all of the largest of the oil industry mega mergers examined by the auditors each had increased gasoline prices. Essentially, the Government Accountability Office found that the Federal Trade Commission's policies on mergers had permitted serial price gouging.

Two years ago, when current Federal Trade Commission Chair Deborah Majoras last came before the Senate for confirmation, I asked a response to the report done by the independent government auditor. Despite her promise to do so, I have yet to receive any response from the Chairman of the Federal Trade Commission.

The Government Accountability Office is not alone in documenting how Government regulators have been missing in action when it comes to protecting our consumers at the gas pump. Since 2001, oil industry mergers totalling more than $19 billion have gone unchallenged by the Federal Trade Commission, according to a recent article in Bloomberg News. The article also reported that these unchecked mergers may have contributed to the highest gasoline prices in the past 20 years.

According to the Federal Trade Commission's own records, the agency imposed no conditions on 28 of 33 oil mergers since 2001. You can see the results of the Federal Trade Commission's inaction at gas stations in Oregon and across the country. Nationwide, the Government Accountability Office found between 1994 and 2002, gasoline market concentration increased in all but four States. As a result of the Government's merger policies, 46 States now have gasoline markets with moderate or high concentration, compared to only about half that just 10 years ago.

The Federal Trade Commission, oil industry officials, and consumer groups all agree in these concentrated markets oil companies do not need to collude in order to raise prices. The Federal Trade Commission's former general counsel, William Kovacic, has said:

> It may be possible in selected markets for individual firms to unilaterally increase prices.

In other words, the Federal Trade Commission's general counsel basically admitted that oil companies in these markets can price gouge with impunity. Mr. Kovacic is one of the two nominees for the Federal Trade Commission who is now before the Senate.

Despite all of this evidence that gasoline markets around the country have become more concentrated and that in these concentrated markets individual firms can raise prices and extract monopoly profits, the Federal Trade Commission has failed to take effective action to check oil industry mergers. In the vast majority of cases, the Federal Trade Commission took no action at all.

The Federal Trade Commission's inaction on oil mergers is once again a front burner issue with the recent announcement that ConocoPhillips, an oil company formed from a series of mergers the Federal Trade Commission allowed, is acquiring Burlington Resources to create one of the largest U.S. natural gas producers. Many in the oil and gas industry expect this merger announcement will lead to a similar wave of consolidation in the natural gas industry. This, in turn, will lead to greater consolidation of the industry and fewer choices for consumers.

In addition to the inaction on merger issues, the Federal Trade Commission has also failed to act against proven areas of anticompetitive activity. Major oil companies are charging, in some instances, dealers' discriminatory ''zone prices'' that make it impossible for dealers to compete fairly with company-owned stations or even other dealers in the same geographic area. With zone pricing, one oil company sells the same gas to its own brand stations at different prices. The cost to the oil company of making the gas is the same. In many cases, the cost of delivering that gas to the service station is the same, but the price the station pays is not the same. And the station that pays the higher price is not able to compete, and eventually that station goes out of business and there is further concentration in that particular community's market.

Another example of anticompetitive practices that now occur in gas markets is a practice known as redlining. This involves oil companies making certain areas off limits to independent gas distributors, known as jobbers, who bring competition to a particular area. The Federal Trade Commission's own investigation of west coast gas markets found that the practice of redlining was rampant on the west coast, but the Federal Trade Commission concluded that it could only take action to stop this anticompetitive practice if the redlining was the result of out and out collusion, a standard that is almost impossible to prove.

In my home State, one courageous gasoline dealer took on the major oil companies and won a multimillion-dollar court judgment in a case that involved redlining. This dealer gave the evidence that was used to win his case in court to the Federal Trade Commission. The Federal Trade Commission, the premier consumer protection agency of the Federal Government, failed to do anything to help this dealer or to reign in the anticompetitive practices at issue.

In areas other than energy, the Federal Trade Commission, in my view, has made a significant contribution to protecting consumers. In other areas, the Federal Trade Commission has not hesitated to move aggressively on behalf of the consuming public. To give one example, the Federal Trade Commission created a Do Not Call Program to prevent consumers from being hassled at home. With its Do Not Call Program, the agency pushed to protect consumers to the limits of its authority and even went beyond what the courts say it had authority to do.

For some reason, in the case of energy, the Federal Trade Commission had a regulatory blind spot. That has been true, I am sad to report, in both Democrat and Republican administrations. It is a bipartisan blind spot that keeps the agency from looking out for the millions of Americans who consume gasoline and gas products every single day.

The Federal Trade Commission will not even speak out now on behalf of consumers getting gouged at the gas pump. The agency will not use its bully pulpit to even say that record high gas prices are an issue of concern that they will be looking at closely.

The FTC approach on gas prices is one, in my view, that must change. I do not intend to support the business-as-usual approach on energy that has been seen too long at the Federal Trade Commission. I have met with both the nominees to the Federal Trade Commission, Mr. William Kovacic and Mr. Thomas Rosch. I also asked them to provide me their views in writing in an effort to find out whether they would push the Commission to take a different approach from its long history of inaction in this area.

Unfortunately, neither of these individuals provided me with any compelling evidence that they are committed to and will, in fact, work aggressively to change the culture of inaction at the Federal Trade Commission with respect to consumer protection in the energy field.

Despite this prior statement about how oil companies with market power could gouge with impunity, Mr. Kovacic, the former Trade Commission general counsel, failed to identify any new authority the Federal Trade Commission needed to close the regulatory gap. On the question of whether the Federal Trade Commission needed added authority to address mergers in the petroleum industry that the GAO found had increased gasoline prices, Mr. Kovacic wrote:

> I do not have any specific preliminary in mind at the moment.

Mr. Kovacic was more constructive on the question of whether there were other ways the FTC's statutory authority might be enhanced. He suggested Federal antitrust laws could be enhanced by encouraging whistleblowers to reveal illegal conduct by adding qui tam mechanisms that allow the whistleblowers to receive a percentage of

the funds the government recovers from wrongdoers. I certainly agree a qui tam mechanism could provide a useful supplement to Government oversight in many areas. It is not a substitute for the Federal Trade Commission doing its job. And Mr. Kovacic did not identify any way the Federal Trade Commission's own approach to the oil industry would change. Given the Federal Trade Commission's record, given what they have done in the last few years, essentially being AWOL when it comes to energy, Mr. Kovacic's proposal essentially amounts to contracting out the Federal Trade Commission's enforcement authority in this area.

Now, I personally believe that the Federal Trade Commission itself needs to be an aggressive watchdog, looking out for consumers at the gas pump, not passively waiting for an industry whistleblower to come forward with smoking-gun evidence before taking action. That is why I find, at this point, no evidence that Mr. Kovacic would bring a different kind of outlook to the Federal Trade Commission's work in the energy field.

Now, the other nominee, Mr. Rosch, had a more interesting proposal. He suggests restoring the Federal Trade Commission's authority to challenge unilateral conduct affecting competition, authority that the Federal Trade Commission had prior to 1994. That would be a good first step toward closing the existing gap in the Agency's regulatory authority.

Had Mr. Rosch ended his letter to me at that point, I would have been willing to support his nomination. However, he went on to undercut his case when it came to anticompetitive practices in a key area: zone pricing. In effect, before taking any action to deal with this particularly egregious and anticompetitive practice, Mr. Rosch argued for waiting for the outcome of a pending court case and for recommendations of the Antitrust Modernization Commission. So he was, in effect, saying, as the Federal Trade Commission says again and again and again in the energy field, that he wants more time to study, which means more delay and more inaction as it relates to protecting consumers from anticompetitive practices.

It is my view that we have had enough delay and enough study when it comes to the anticompetitive practices of the oil industry. I do not intend to support business as usual at the Agency, and I am not going to support business-as-usual nominees to be FTC Commissioners. I intend to continue to raise my concerns as long as the Federal Trade Commission continues to duck aggressive consumer protection efforts in an area that, for reasons that I cannot fully explain to the Senate, they are simply unwilling to take up.

This Agency, which is willing to step in in a variety of areas, such as ''do not call,'' stretches their authority to the limits and then even beyond, for some reason continues to sit on their hands when it relates to energy.

I want things to change at the Agency. I want to see a more aggressive approach on behalf of energy consumers. I am not convinced that anything will change if Mr. Kovacic or Mr. Rosch is appointed to the Federal Trade Commission. Both of these individuals are going to get approved by the Senate in the last few hours of this session.

It is my hope, in wrapping up—I see the Senator from Pennsylvania on the floor, who has patiently waited—it is my hope that these two individuals, Mr. Rosch and Mr. Kovacic, will prove that I am incorrect in the judgments I make tonight. I hope they will be aggressive. I hope they will look for opportunities to stand up for the consumer. I hope they will change this course of inaction that has been laid out by Ms. Majoras. If those two individuals, Mr. Kovacic and Mr. Rosch, take those kinds of steps, if they take the kinds of steps I have advocated tonight—to stand up for the energy consumer in this country—they will have my full support.

Mr. President, I yield the floor and suggest the absence of a quorum.

The PRESIDING OFFICER (Mr. COLEMAN). The clerk will call the roll.

The assistant journal clerk proceeded to call the roll.

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

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

DEPARTMENT OF JUSTICE APPROPRIATIONS AUTHORIZATION ACT, FISCAL YEARS 2006 THROUGH 2009

Mr. SANTORUM. Mr. President, I ask unanimous consent that the Committee on the Judiciary be discharged from further consideration of H.R. 3402 and the Senate proceed to its immediate consideration.

I ask unanimous consent that the amendment at the desk be agreed to, the bill, as amended, be read a third time and passed, the motion to reconsider be laid upon the table, and any statements relating to the measure be printed in the RECORD.

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

The amendment (No. 2681) was agreed to.

(The amendment is printed in today's RECORD under ''Text of Amendments.'')

Mr. LEAHY. Mr. President, I am pleased that the Senate is finally passing H.R. 3402, as amended—a carefully crafted, bipartisan, bicameral compromise to provide for the comprehensive reauthorization of both the Violence Against Women Act, VAWA, and the programs and authorities under the jurisdiction of the Department of Justice, DOJ. It has been a long time in coming.

I thank Senator SPECTER, the Chairman of the Senate Judiciary Committee, and Senators BIDEN and KENNEDY for their hard work and steadfast support for crafting this compromise legislation. I want to especially recognize Senator BIDEN for his longstanding commitment to finding ways to help end violence against women and children, and his leadership in helping bring the Violence Against Women Act to the floor and in ensuring that its vital programs continue.

House Judiciary Committee Chairman SENSENBRENNER and Ranking Member CONYERS deserve much credit as well for working so closely with us in a bipartisan manner to pass legislation in the House of Representatives. It is no easy task to take two large legislative measures and combine them into a single bipartisan, bicameral agreement. That is exactly what we have done, and we have achieved this milestone because we had the willingness of everyone involved to negotiate in good faith to see VAWA and the Justice Department authorization bill ushered into law this year.

I would like to highlight several of the provisions of this bipartisan measure—a bill that combines the Violence Against Women Act, S. 1197, as passed by the Senate, and the Department of Justice Appropriations Authorization Act, for Fiscal Years 2006 through 2009, H.R. 3402, as passed by the House.

The enactment of the Violence Against Women Act more than a decade ago marked an important national commitment to survivors of domestic violence and sexual assault. I am proud to join Senators BIDEN, HATCH, SPECTER and others as an original cosponsor of our reauthorization effort. The bill that passed the Senate had 58 cosponsors. Enactment of this measure will further our goal of ending domestic violence, dating violence, sexual assault, and stalking.

Earlier in my career as a prosecutor in Vermont, I witnessed the devastating effects of domestic violence. Violence and abuse affect people of all walks of life, regardless of gender, race, culture, age, class or sexuality. Such violence is a crime and it is always wrong, whether the abuser is a family member, someone the victim is dating, a current or past spouse, boyfriend, or girlfriend, an acquaintance, or a stranger.

The National Crime Victimization Survey estimates there were 691,710 non-fatal, violent incidents committed against victims by current and former spouses, boyfriends or girlfriends—also known as intimate partners—during 2001. Of those incidents, 85 percent were against women. The rate of non-fatal intimate partner violence against women has fallen steadily since 1993, when the rate was 9.8 incidents per 1,000 people. In 2001, the number fell to 5.0 incidents per 1,000 people, nearly a 50 percent reduction, but still unacceptably high. Tragically, however, the survey found that 1,600 women were killed in 1976 by a current or former spouse or boyfriend, while in 2000 some