

"(1) the term 'abortion' means the use or prescription of any instrument, medicine, drug, or any other substance or device intentionally to terminate the pregnancy of a female known to be pregnant, with an intention other than to increase the probability of a live birth, to preserve the life or health of the child after live birth, to terminate an ectopic pregnancy, or to remove a dead unborn child who died as the result of a spontaneous abortion, accidental trauma, or a criminal assault on the pregnant female or her unborn child;

"(2) the term 'actual notice' means the giving of written notice directly, in person, by the physician or any agent of the physician;

"(3) the term 'constructive notice' means notice that is given by certified mail, return receipt requested, restricted delivery to the last known address of the person being notified, with delivery deemed to have occurred 48 hours following noon on the next day subsequent to mailing on which regular mail delivery takes place, days on which mail is not delivered excluded;

"(4) the term a 'law requiring parental involvement in a minor's abortion decision' means a law—

"(A) requiring, before an abortion is performed on a minor, either—

"(i) the notification to, or consent of, a parent of that minor; or

"(ii) proceedings in a State court;

"(B) that does not provide as an alternative to the requirements described in subparagraph (A) notification to or consent of any person or entity who is not described in that subparagraph;

"(5) the term 'minor' means an individual who is not older than 18 years and who is not emancipated under State law;

"(6) the term 'parent' means—

"(A) a parent or guardian;

"(B) a legal custodian; or

"(C) a person standing in loco parentis who has care and control of the minor, and with whom the minor regularly resides; as determined by State law;

"(7) the term 'physician' means a doctor of medicine legally authorized to practice medicine by the State in which such doctor practices medicine, or any other person legally empowered under State law to perform an abortion; and

"(8) the term 'State' includes the District of Columbia and any commonwealth, possession, or other territory of the United States, and any Indian tribe or reservation."

#### SEC. 4. CLERICAL AMENDMENT.

The table of chapters at the beginning of part I of title 18, United States Code, is amended by inserting after the item relating to chapter 117 the following new items:

"117A. Transportation of minors in circumvention of certain laws relating to abortion ..... 2431

"117B. Child interstate abortion notification ..... 2435".

#### SEC. 5. SEVERABILITY AND EFFECTIVE DATE.

(a) The provisions of this Act shall be severable. If any provision of this Act, or any application thereof, is found unconstitutional, that finding shall not affect any provision or application of the Act not so adjudicated.

(b) This Act and the amendments made by this Act shall take effect 45 days after the date of enactment of this Act.

#### AMENDMENT NO. 5090

Mr. BENNETT. Mr. President, on behalf of the majority leader, I move to concur in the amendment of the House and send an amendment to the desk and ask for its immediate consideration.

The PRESIDING OFFICER. Without objection, the motion is agreed to.

The clerk will report.

The assistant legislative clerk read as follows:

The Senator from Utah [Mr. BENNETT], for Mr. FRIST, proposes an amendment numbered 5090 to the House amendment.

Mr. BENNETT. I ask that the reading of the amendment be dispensed with.

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

The amendment is as follows:

On page 12, line 2, strike "45 days" and insert "46 days"

Mr. BENNETT. I ask for the yeas and nays.

The PRESIDING OFFICER. Is there a sufficient second?

There is a sufficient second.

The yeas and nays were ordered.

#### AMENDMENT NO. 5091 TO AMENDMENT NO. 5090

Mr. BENNETT. Mr. President, on behalf of the majority leader, I send a second-degree amendment to the desk.

The PRESIDING OFFICER. The clerk will report.

The assistant legislative clerk read as follows:

The Senator from Utah [Mr. BENNETT], for Mr. FRIST, proposes an amendment numbered 5091 to amendment No. 5090.

Mr. BENNETT. Mr. President, I ask unanimous consent that reading of the amendment be dispensed with.

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

The amendment is as follows:

Strike "46 days" and insert "44 days".

#### CLOTURE MOTION

Mr. BENNETT. Mr. President, on behalf of the leader, I send a cloture motion to the desk.

The PRESIDING OFFICER. Without objection, the cloture motion having been presented under rule XXII, the Chair directs the clerk to read the motion.

The assistant legislative clerk read as follows:

#### CLOTURE MOTION

We the undersigned Senators, in accordance with the provisions of rule XXII of the Standing Rules of the Senate, do hereby move to bring to a close debate on the motion to concur in the House amendment to S. 403: a bill to amend title 18, United States Code, to prohibit taking minors across State lines in circumvention of laws requiring the involvement of parents in abortion decisions.

Bill Frist, John Ensign, Tom Coburn, Craig Thomas, Jim DeMint, Wayne Allard, Mitch McConnell, Trent Lott, Jim Bunning, Conrad Burns, Ted Stevens, Johnny Isakson, John Cornyn, Jeff Sessions, Larry Craig, Mike Crapo, John Thune.

#### MORNING BUSINESS

Mr. BENNETT. Mr. President, I ask unanimous consent we now return to morning business.

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

#### ORDERS FOR THURSDAY, SEPTEMBER 28, 2006

Mr. BENNETT. Mr. President, I ask unanimous consent that when the Sen-

ate completes its business today, it stand in adjournment until 9:30 a.m. on Thursday, September 28. I further ask consent that following the prayer and pledge, the morning hour be deemed expired, the Journal of proceedings be approved to date, the time for the two leaders be reserved, and the Senate proceed to a period of morning business for up to 30 minutes, with the first 15 minutes under the control of the majority leader or his designee, and the final 15 minutes under the control of the Democratic leader or his designee; further, that following morning business, the Senate resume consideration of S. 3930, as under the previous order.

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

#### PROGRAM

Mr. BENNETT. Mr. President, today we were able to reach an agreement on the military tribunal legislation. We have disposed of one amendment today. The Levin substitute amendment was defeated this afternoon. The Specter amendment is pending, and there will be some additional debate time on that tomorrow. Under the agreement, we have three other amendments to consider and then final passage of the bill. Therefore, Senators can expect rollcall votes throughout tomorrow's session.

As a reminder, the majority leader has outlined a number of items that we need to complete before we leave for the recess. We will be here until we can get these items finished.

#### ORDER FOR ADJOURNMENT

Mr. BENNETT. Mr. President, if there is no further business to come before the Senate, I ask unanimous consent that the Senate stand in adjournment under the previous order, following the remarks made by the Senator from Illinois for up to 10 minutes.

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

Mr. BENNETT. Mr. President, does the Senator from Illinois require more than 10 minutes?

Mr. OBAMA. If I could, I do not think I will need more than 15 minutes. It may be a little more than 10 minutes.

Mr. BENNETT. Mr. President, I amend my request that the Senate stand in adjournment under the previous order following the remarks of the Senator from Illinois for up to 20 minutes.

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

The Senator from Illinois is recognized.

Mr. OBAMA. Mr. President, thank you very much. And I thank my dear friend from Utah.

#### HABEAS CORPUS—AMENDMENT NO. 5087

Mr. OBAMA. Mr. President, I would like to address the habeas corpus

amendment that is on the floor and that we just heard a lengthy debate about between Senator SPECTER and Senator WARNER.

A few years ago, I gave a speech in Boston that people talk about from time to time. In that speech, I spoke about why I love this country, why I love America, and what I believe sets this country apart from so many other nations in so many areas. I said:

That is the true genius of America—a faith in simple dreams, an insistence on small miracles; that we can tuck in our children at night and know that they are fed and clothed and safe from harm; that we can say what we think, write what we think, without hearing a sudden knock on the door. . . .

Without hearing a sudden knock on the door. I bring this up because what is at stake in this bill, and in the amendment that is currently being debated, is the right, in some sense, for people who hear that knock on the door and are placed in detention because the Government suspects them of terrorist activity to effectively challenge their detention by our Government.

Now, under the existing rules of the Detainee Treatment Act, court review of anyone's detention is severely restricted. Fortunately, the Supreme Court in *Hamdan* ensured that some meaningful review would take place. But in the absence of Senator SPECTER's amendment that is currently pending, we will essentially be going back to the same situation as if the Supreme Court had never ruled in *Hamdan*, a situation in which detainees effectively have no access to anything other than the Combatant Status Review Tribunal, or the CSRT.

Now, I think it is important for all of us to understand exactly the procedures that are currently provided for under the CSRT. I have actually read a few of the transcripts of proceedings under the CSRT. And I can tell you that oftentimes they provide detainees no meaningful recourse if the Government has the wrong guy.

Essentially, reading these transcripts, they proceed as follows: The Government says: You are a member of the Taliban. And the detainee will say: No, I'm not. And then the Government will not ask for proof from the detainee that he is not. There is no evidence that the detainee can offer to rebut the Government's charge.

The Government then moves on and says: And on such and such a date, you perpetrated such and such terrorist crime. And the detainee says: No, I didn't. You have the wrong guy. But again, he has no capacity to place into evidence anything that would rebut the Government's charge. And there is no effort to find out whether or not what he is saying is true.

And it proceeds like that until effectively the Government says, OK, that is the end of the tribunal, and he goes back to detention. Even if there is evidence that he was not involved in any terrorist activity, he may not have any

mechanism to introduce that evidence into the hearing.

Now, the vast majority of the folks in Guantanamo, I suspect, are there for a reason. There are a lot of dangerous people. Particularly dangerous are people like Khalid Shaikh Mohammed. Ironically, those are the guys who are going to get real military procedures because they are going to be charged by the Government. But detainees who have not committed war crimes—or where the Government's case is not strong—may not have any recourse whatsoever.

The bottom line is this: Current procedures under the CSRT are such that a perfectly innocent individual could be held and could not rebut the Government's case and has no way of proving his innocence.

I would like somebody in this Chamber, somebody in this Government, to tell me why this is necessary. I do not want to hear that this is a new world and we face a new kind of enemy. I know that. I know that every time I think about my two little girls and worry for their safety—when I wonder if I really can tuck them in at night and know that they are safe from harm. I have as big of a stake as anybody on the other side of the aisle and anybody in this administration in capturing terrorists and incapacitating them. I would gladly take up arms myself against any terrorist threat to make sure my family is protected.

But as a parent, I can also imagine the terror I would feel if one of my family members were rounded up in the middle of the night and sent to Guantanamo without even getting one chance to ask why they were being held and being able to prove their innocence.

This is not just an entirely fictional scenario, by the way. We have already had reports by the CIA and various generals over the last few years saying that many of the detainees at Guantanamo should not have been there. As one U.S. commander of Guantanamo told the *Wall Street Journal*:

Sometimes, we just didn't get the right folks.

We all know about the recent case of the Canadian man who was suspected of terrorist connections, detained in New York, sent to Syria—through a rendition agreement—tortured, only to find out later it was all a case of mistaken identity and poor information.

In this war, where terrorists can plot undetected from within our borders, it is absolutely vital that our law enforcement agencies are able to detain and interrogate whoever they believe to be a suspect, and so it is understandable that mistakes will be made and identities will be confused. I don't blame the Government for that. This is an extraordinarily difficult war we are prosecuting against terrorists. There are going to be situations in which we cast too wide a net and capture the wrong person.

But what is avoidable is refusing to ever allow our legal system to correct

these mistakes. By giving suspects a chance—even one chance—to challenge the terms of their detention in court, to have a judge confirm that the Government has detained the right person for the right suspicions, we could solve this problem without harming our efforts in the war on terror one bit.

Let me respond to a couple of points that have been made on the other side. You will hear opponents of this amendment say it will give all kinds of rights to terrorist masterminds, such as Khalid Shaikh Mohammed. But that is not true. The irony of the underlying bill as it is written is that someone like Khalid Shaikh Mohammed is going to get basically a full military trial, with all of the bells and whistles. He will have counsel, he will be able to present evidence, and he will be able to rebut the Government's case. The feeling is that he is guilty of a war crime and to do otherwise might violate some of our agreements under the Geneva Conventions. I think that is good, that we are going to provide him with some procedure and process. I think we will convict him, and I think he will be brought to justice. I think justice will be carried out in his case.

But that won't be true for the detainees who are never charged with a terrorist crime, who have not committed a war crime. Under this bill, people who may have been simply at the wrong place at the wrong time—and there may be just a few—will never get a chance to appeal their detention. So, essentially, the weaker the Government's case is against you, the fewer rights you have. Senator SPECTER's amendment would fix that, while still ensuring that terrorists like Mohammed are swiftly brought to justice.

You are also going to hear a lot about how lawyers are going to file all kinds of frivolous lawsuits on behalf of detainees if habeas corpus is in place. This is a cynical argument because I think we could get overwhelming support in this Chamber right now for a measure that would restrict habeas to a one-shot appeal that would be limited solely to whether someone was legally detained or not. I am not interested in allowing folks at Guantanamo to complain about whether their cell is too small or whether the food they get is sufficiently edible or to their tastes. That is not what this is about. We can craft a habeas bill that says the only question before the court is whether there is sufficient evidence to find that this person is truly an unlawful enemy combatant and belongs in this detention center. We can restrict it to that. And although I have seen some of those amendments floating around, those were not amendments that were admitted during this debate. It is a problem that is easily addressed. It is not a reason for us to wholesale eliminate habeas corpus.

Finally, you will hear some Senators argue that if habeas is allowed, it renders the CSRT process irrelevant because the courts will embark on de

novo review, meaning they will completely retry these cases, take new evidence. So whatever findings were made in the CSRT are not really relevant because the court is essentially going to start all over again.

I actually think some of these Senators are right on this point. I believe we could actually set up a system in which a military tribunal is sufficient to make a determination as to whether someone is an enemy combatant and would not require the sort of traditional habeas corpus that is called for as a consequence of this amendment, where the court's role is simply to see whether proper procedures were met. The problem is that the way the CSRT is currently designed is so insufficient that we can anticipate the Supreme Court overturning this underlying bill, once again, in the absence of habeas corpus review.

I have had conversations with some of the sponsors of the underlying bill who say they agree that we have to beef up the CSRT procedures. Well, if we are going to revisit the CSRT procedures to make them stronger and make sure they comport with basic due process, why not leave habeas corpus in place until we have actually fixed it up to our satisfaction? Why rush through it 2 days before we are supposed to adjourn? Because some on the other side of the aisle want to go campaign on the issue of who is tougher on terrorism and national security.

Since 9/11, Americans have been asked to give up certain conveniences and civil liberties—long waits in airport security lines, random questioning because of a foreign-sounding last

name—so that the Government can defeat terrorism wherever it may exist. It is a tough balance to strike. I think we have to acknowledge that whoever was in power right now, whoever was in the White House, whichever party was in control, that we would have to do some balancing between civil liberties and our need for security and to get tough on those who would do us harm.

Most of us have been willing to make some sacrifices because we know that, in the end, it helps to make us safer. But restricting somebody's right to challenge their imprisonment indefinitely is not going to make us safer. In fact, recent evidence shows it is probably making us less safe.

In Sunday's New York Times, it was reported that previous drafts of the recently released National Intelligence Estimate, a report of 16 different Government intelligence agencies, describe:

... actions by the United States Government that were determined to have stoked the jihad movement, like the indefinite detention of prisoners at Guantanamo Bay.

This is not just unhelpful in our fight against terror, it is unnecessary. We don't need to imprison innocent people to win this war. For people who are guilty, we have the procedures in place to lock them up. That is who we are as a people. We do things right, and we do things fair.

Two days ago, every Member of this body received a letter, signed by 35 U.S. diplomats, many of whom served under Republican Presidents. They urged us to reconsider eliminating the

rights of habeas corpus from this bill, saying:

To deny habeas corpus to our detainees can be seen as a prescription for how the captured members of our own military, diplomatic, and NGO personnel stationed abroad may be treated. . . . The Congress has every duty to insure their protection, and to avoid anything which will be taken as a justification, even by the most disturbed minds, that arbitrary arrest is the acceptable norm of the day in the relations between nations, and that judicial inquiry is an antique, trivial and dispensable luxury.

The world is watching what we do today in America. They will know what we do here today, and they will treat all of us accordingly in the future—our soldiers, our diplomats, our journalists, anybody who travels beyond these borders. I hope we remember this as we go forward. I sincerely hope we can protect what has been called the "great writ"—a writ that has been in place in the Anglo-American legal system for over 700 years.

Mr. President, this should not be a difficult vote. I hope we pass this amendment because I think it is the only way to make sure this underlying bill preserves all the great traditions of our legal system and our way of life.

I yield the floor.

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ADJOURNMENT UNTIL 9:30 A.M.  
TOMORROW

The PRESIDING OFFICER. Under the previous order, the Senate is adjourned until 9:30 a.m.

There being no objection, the Senate, at 7:39 p.m., adjourned until Thursday, September 28, 2006, at 9:30 a.m.