

at all. I do not know how often because I have not been briefed on the details, but apparently on many occasions this Government has wiretapped the conversations of American citizens without court approval. The President and the administration have not followed the clear letter of the law. That is an important and serious constitutional question.

I think the resolution being brought to us by Senator FEINGOLD will cause us to look anew at this critically important issue. Whether it results in any action by Congress, as I said, remains to be seen. But I think it is important that we accept this challenge by the Senator from Wisconsin and that hearings be held in the Judiciary Committee, if that is where the resolution is eventually referred, and possibly even in the Intelligence Committee.

I hope the Intelligence Committee will start to move on this on a bipartisan basis. It has historically been a bipartisan committee. But recently in the last few weeks there have been many important votes taken on partisan rollcalls, votes relative to the authority and exercise of that authority by this committee in investigating this Bush administration.

It would be good if the committee could return to its bipartisan ways. I think it would give the institution of the Senate a vote of confidence that we can stand and investigate Presidents of either political party if there is serious and important policy questions to be determined.

I yield the floor.

Mr. SESSIONS. Mr. President, what is the time agreement?

The PRESIDING OFFICER. There is a previous order that at 5:30 we will move to executive session and proceed to a vote on Calendar No. 520.

Mr. SESSIONS. Mr. President, I think back to a young Senator INOUE, serving in our military, putting his life at risk and nearly losing it for our country. One thing he had a right to expect of his Congress was, as a soldier, he would be supported in the conflict.

We are here today hearing of a resolution presented by Senator FEINGOLD to censure the President of the United States. It is baseless. It is not sound in law, and it is not sound in policy. We, by over a three-quarters vote, voted to send our soldiers in harm's way. This Senate voted to do that. We authorized the President, in a use of force resolution, to identify those responsible for attacking us and to attack and destroy them, to use such military force as he deemed appropriate to attack and kill them. And our soldiers have been doing that.

The Supreme Court recently had to deal with the situation in which an American citizen was captured abroad, Hamdi. They caught him. It went before the Supreme Court of the United States, and the issue was whether he was entitled to a trial.

The question was, Was he entitled to a trial? The Supreme Court held other-

wise. The Supreme Court said that he was a prisoner of war, and the authorization of military force authorized the military to attack and kill enemies of the United States. It also authorized them to capture them. That was incident to the use of military force.

It is quite plain that our history of military affairs supports the concept that surveilling in a time of war is incident to the carrying on of war. In the same way that we have a right to take an American citizen and lock them up in jail without trial if they are identified to be with the enemy, we can surveil the enemy's communications.

The President authorized simply this: al-Qaida conversations in which one of the parties to that conversation is outside the United States could be monitored. We know it was through those kinds of communications that 9/11 occurred. We had sleeper cells here activated by foreign communications.

It is wrong to undermine this President while we have our soldiers at war and at risk, to suggest that he has done something wrong and needs to be censured.

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

Mr. SESSIONS. I express my strongest disapproval of the propriety of this resolution.

#### EXECUTIVE SESSION

#### NOMINATION OF LEO MAURY GORDON TO BE A JUDGE OF THE UNITED STATES COURT OF INTERNATIONAL TRADE

The PRESIDING OFFICER (Mr. ALEXANDER). Under the previous order, the hour of 5:30 p.m. having arrived, the Senate will go into executive session and proceed to a vote on Calendar No. 520, which the clerk will report.

The legislative clerk read the nomination of Leo Maury Gordon, of New Jersey, to be a judge on the United States Court of International Trade.

Mr. LEAHY. Mr. President, this evening the Senate will consider another lifetime appointment to a circuit court. The nominee is Leo Maury Gordon, who is nominated to serve on the U.S. Court or International Trade. Mr. Gordon is the court's longtime clerk, and he is very familiar with its important work. I urge all Senators, Republican and Democratic, to support this nomination.

His confirmation will bring the total number of judicial appointments since January 2001 to 232, including the confirmations of two Supreme Court Justices and 43 circuit court judges. Of course, 100 judges were confirmed in the 17 months that Democrats were in the Senate majority. In the other 45 months, 132 judges have been confirmed. Ironically, under Democratic leadership, the Senate was almost twice as productive as under Republican leadership.

It is most regrettable that this President has not fulfilled his promise to

the American people to be a uniter. Nor has he fulfilled his pledge to complete his work in advance of vacancies and to make nominations promptly. Judicial vacancies have grown to more than 50, and the White House has failed to send a nominee for more than half of those. Some of those vacancies have been sitting empty for more than a year. Over and over the White House has missed the deadline the President established for himself, and today, half of the judicial vacancies, 27, are without a nomination. One-third of those vacancies are already more than 180 days old, and one-third of the judicial emergency vacancies are without a nominee.

If the White House would eliminate its partisan political and ideological litmus tests from the judicial nominations process and its emphasis on rewarding cronies and focus only on qualifications and consensus, the job of selecting nominees and our job of considering them for confirmation would be much easier. That is what this confirmation demonstrates.

Recently we have seen the President withdraw a circuit nomination after information became public about this nominee's rulings in a number of cases in which he appears to have had a conflict of interest.

At a minimum, this case reinforces a point about this White House's poor vetting process for important nominations. A number of nominations by this President have had to be withdrawn. Among the more well known are Bernard Kerik to head Homeland Security and Harriet Miers to the Supreme Court, which were withdrawn for different reasons. It was, as I recall, reporting in a national magazine that doomed the Kerik nomination.

When we are considering lifetime appointments of judicial officers who are entrusted with protecting the rights of Americans and when we are reviewing important law enforcement officials, it is important to be thorough. Unfortunately, this White House seems more interested in rewarding cronies.

Ms. CANTWELL. I ask for the yeas and nays.

The PRESIDING OFFICER. Is there a sufficient second?

There appears to be a sufficient second.

The question is, Will the Senate advise and consent to the nomination of Leo Maury Gordon to be a judge of the United States Court of International Trade?

The clerk will call the roll.

The legislative clerk called the roll.

Mr. MCCONNELL. The following Senators were necessarily absent: the Senator from Georgia (Mr. CHAMBLISS), the Senator from Minnesota (Mr. COLEMAN), the Senator from Idaho (Mr. CRAIG), the Senator from Nevada (Mr. ENSIGN), the Senator from Wyoming (Mr. ENZI), the Senator from Georgia (Mr. ISAKSON), and the Senator from Alaska (Ms. MURKOWSKI).

Further, if present and voting, the Senator from Minnesota (Mr. COLEMAN) would have voted "yea."

Mr. McCONNELL. The following Senators were necessarily absent: the Senator from Pennsylvania (Mr. SANTORUM) and the Senator from Oregon (Mr. SMITH).

Mr. DURBIN. I announce that the Senator from Indiana (Mr. BAYH), the Senator from Minnesota (Mr. DAYTON), the Senator from Hawaii (Mr. INOUE), the Senator from South Dakota (Mr. JOHNSON), the Senator from Louisiana (Ms. LANDRIEU), the Senator from New Jersey (Mr. MENENDEZ), the Senator from Maryland (Ms. MIKULSKI), the Senator from Florida (Mr. NELSON), and the Senator from West Virginia (Mr. ROCKEFELLER) are necessarily absent.

I further announce that if present and voting, the Senator from Minnesota (Mr. DAYTON) would vote "yea."

The PRESIDING OFFICER (Mr. CORNYN). Are there any other Senators in the Chamber desiring to vote?

The result was announced—yeas 82, nays 0, as follows:

[Rollcall Vote No. 37 Ex.]

#### YEAS—82

Akaka	Dole	McCain
Alexander	Domenici	McConnell
Allard	Dorgan	Murray
Allen	Durbin	Nelson (NE)
Baucus	Feingold	Obama
Bennett	Feinstein	Pryor
Biden	Frist	Reed
Bingaman	Graham	Reid
Bond	Grassley	Roberts
Boxer	Gregg	Salazar
Brownback	Hagel	Sarbanes
Bunning	Harkin	Schumer
Burns	Hatch	Sessions
Burr	Hutchison	Shelby
Byrd	Inhofe	Snowe
Cantwell	Jeffords	Specter
Carper	Kennedy	Stabenow
Chafee	Kerry	Stevens
Clinton	Kohl	Sununu
Coburn	Kyl	Talent
Cochran	Lautenberg	Thomas
Collins	Leahy	Thune
Conrad	Levin	Vitter
Cornyn	Lieberman	Voinovich
Crapo	Lincoln	Warner
DeMint	Lott	Wyden
DeWine	Lugar	
Dodd	Martinez	

#### NOT VOTING—18

Bayh	Enzi	Mikulski
Chambliss	Inouye	Murkowski
Coleman	Isakson	Nelson (FL)
Craig	Johnson	Rockefeller
Dayton	Landrieu	Santorum
Ensign	Menendez	Smith

The nomination was confirmed.

#### LEGISLATIVE SESSION

The PRESIDING OFFICER. The Senate will now return to legislative session.

The Senator from North Dakota.

#### ORDER OF PROCEDURE

Mr. CONRAD. Mr. President, I ask unanimous consent that Senator AKAKA and Senator LAUTENBERG be authorized to speak on the death of Senator INOUE's wife, Maggie, and then that Senator WYDEN be recognized for 12 minutes, Senator MURRAY for 15 minutes, and Senator BAUCUS for 15 minutes.

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

#### SNOWE-WYDEN AMENDMENT TO LIFT NEGOTIATION RESTRICTIONS ON MEDICARE

Mr. WYDEN. Mr. President, on this difficult evening, I wish to take just a few minutes to talk about the budget.

Last Congress, Senator SNOWE and I, on a bipartisan basis, saw 51 Members of the Senate support our bipartisan legislation to lift the restriction on Medicare so that program could bargain to hold down the cost of medicine. That vote, where a majority of Senators went on record in supporting the effort to hold down the cost of medicine, took place before the program went into effect. It seems to me everything that has happened over the last few months, since a majority of the Senate voted for our bipartisan amendment, supports our case for passing that legislation now.

We will be offering our bipartisan proposal, the Snowe-Wyden amendment, later this week, and I wish to take just a few minutes to outline why it is so important.

The American Association of Retired Persons says it all in a letter endorsing our bipartisan Snowe-Wyden proposal. I ask unanimous consent that the AARP letter endorsing the Snowe-Wyden legislation be printed in the RECORD.

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

AARP,  
March 13, 2006.

Hon. RON WYDEN,  
U.S. Senate,  
Washington, DC.

DEAR SENATOR WYDEN: AARP supports your amendment to the Senate fiscal year 2007 budget bill to provide for the ability of the Secretary of Health and Human Services to participate in negotiations with pharmaceutical manufacturers under the Medicare prescription drug program.

Prescription drug prices continue to rise much faster than the rate of inflation. AARP's latest Rx Watchdog report released in February 2006 found that prices for nearly 200 of the brand name medications most commonly used by older Americans rose 6.0 percent during the 12 month period from October 2004–September 2005. At the same time, the rate of general inflation was 3.3 percent. These drug price increases particularly hit older Americans, who use prescription drugs more than any other segment of the U.S. population.

Millions of older and disabled Americans now have the opportunity to choose prescription drug coverage as part of their 2006 Medicare benefit options. To date, millions of Medicare beneficiaries have enrolled in the program and as a result are realizing savings on their prescription drugs. However, improvements to the Medicare Modernization Act are necessary to strengthen the benefit and the Medicare program. We believe the first step is to keep the drug benefit affordable for beneficiaries as well as taxpayers.

While we have seen that the current competitive structure existing in the MMA has helped to bring prescription drug prices down, we believe that giving the Secretary the authority to participate in negotiations may also help to make prescription drugs more affordable for Medicare beneficiaries.

We look forward to working with you and your colleagues on both sides of the aisle to

ensure that the new Medicare Part D benefit remains affordable over time. If you have any further questions, please feel free to contact me, or have your staff contact Anna Schwamlein of our Federal Affairs staff at 202-434-3770.

Sincerely,

DAVID P. SLOANE,  
Sr. Managing Director,  
Government Relations and Advocacy.

Mr. WYDEN. Mr. President, as AARP notes—and they publish an Rx Watchdog report—they have noted that for the nearly 200 brand-name medications most commonly used by older people, the costs of those medicines have gone up twice the rate of inflation. So all Americans get hit by prescription drug costs. Particularly hard hit are older people, and low-income older people, and people with very big prescription drug bills. As noted by AARP, these seniors are hit more than any other segment of the U.S. population by prescription drug costs.

At a time when the costs of this program and the costs of Government have gone through the stratosphere, one would think the Government would be doing everything possible to hold down costs. Yet, unfortunately, in the original prescription drug legislation, a bizarre restriction was put in place that literally bars the Government from being a smart shopper. Everybody else in this country tries to use their clout in the marketplace to get the best possible deal, but not Medicare—not Medicare, which offers a benefit to more than 30 million older people. They are not using the opportunity to go into the marketplace and hold down the costs.

I compare the Government's approach to buying prescription drugs under Medicare to somebody going into Costco and buying toilet paper one roll at a time. Nobody would shop that way. No savvy shopper would ever give up, even before they walked into the store, the opportunity to hold down the costs. But that is what Medicare is doing, and that is what Senator SNOWE and I want to change.

Now, we have seen over the last couple of months older people and their families absolutely up in arms, up in arms about the frustrations of getting this prescription drug program out and usable in a commonsense kind of fashion. It is far too complicated. There are far too many alternatives. Some seniors say that even with a Ph.D. they can't sort it out. But what is especially troubling is at a time when the costs of the program continue to go up and up and up, the Government isn't even taking commonsense steps to hold down the cost of these medicines.

So what Senator SNOWE and I have tried to do in a bipartisan effort for going on 3 years now is to make sure that when necessary the Secretary of Health and Human Services can negotiate for the best possible prices of prescription drugs for older people.

Now, this isn't price control. Specifically, our bipartisan amendment stipulates that the authority granted here