Whereas Foreign Secretary of the United Kingdom Jack Straw warned Iranian officials that they were ''pushing their luck'' by removing the United Nations seals that were placed on the Natanz facility by the IAEA 2 years earlier;

Whereas President of France Jacques Chirac said that the Governments of Iran and North Korea risk making a ''serious error'' by pursuing nuclear activities in defiance of international agreements;

Whereas Foreign Minister of Germany Frank-Walter Steinmeier said that the Government of Iran had ''crossed lines which it knew would not remain without consequences'';

Whereas Secretary of State Condoleezza Rice stated, ''It is obvious that if Iran cannot be brought to live up to its international obligations, in fact, the IAEA Statute would indicate that Iran would have to be referred to the U.N. Security Council.'';

Whereas President of Iran Mahmoud Ahmadinejad stated, ''The Iranian government and nation has no fear of the Western ballyhoo and will continue its nuclear programs with decisiveness and wisdom.'';

Whereas the United States has joined with the Governments of Britain, France, and Germany in calling for a meeting of the IAEA to discuss Iran's non-compliance with its IAEA obligations;

Whereas President Ahmadinejad has stated that Israel should be ''wiped off the map''; and

Whereas the international community is in agreement that the Government of Iran should not seek the development of nuclear weapons:

Now, therefore, be it

Resolved, That the Senate—

(1) condemns the decisions of the Government of Iran to remove United Nations seals from its uranium enrichment facilities and to resume nuclear research efforts;

(2) commends the Governments of Britain, France, and Germany for their efforts to secure the 2004 Paris Agreement, which resulted in the brief suspension in Iran of nuclear enrichment activities;

(3) supports the referral of Iran to the United Nations Security Council under Article XII.C and Article III.B–4 of the Statute of the IAEA for violating the Paris Agreement; and

(4) condemns actions by the Government of Iran to develop, produce, or acquire nuclear weapons.

SENATE RESOLUTION 350—EXPRESSING THE SENSE OF THE SENATE THAT SENATE JOINT RESOLUTION 23 (107TH CONGRESS), AS ADOPTED BY THE SENATE ON SEPTEMBER 14, 2001, AND SUBSEQUENTLY ENACTED AS THE AUTHORIZATION FOR USE OF MILITARY FORCE DOES NOT AUTHORIZE WARRANTLESS DOMESTIC SURVEILLANCE OF UNITED STATES CITIZENS

Mr. LEAHY (for himself and Mr. KENNEDY) submitted the following resolution; which was referred to the Committee on the Judiciary:

S. RES. 350

Whereas the Bill of Rights to the United States Constitution was ratified 214 years ago;

Whereas the Fourth Amendment to the United States Constitution guarantees to the American people the right ''to be secure in their persons, houses, papers, and effects, against unreasonable searches and seizures'';

Whereas the Fourth Amendment provides that courts shall issue ''warrants'' to authorize searches and seizures, based upon probable cause;

Whereas the United States Supreme Court has consistently held for nearly 40 years that the monitoring and recording of private conversations constitutes a ''search and seizure'' within the meaning of the Fourth Amendment;

Whereas Congress was concerned about the United States Government unconstitutionally spying on Americans in the 1960s and 1970s;

Whereas Congress enacted the Foreign Intelligence Surveillance Act of 1978 (50 U.S.C. 1801 et seq.), commonly referred to as ''FISA'', to provide a legal mechanism for the United States Government to engage in searches of Americans in connection with intelligence gathering and counterintelligence;

Whereas Congress expressly enacted the Foreign Intelligence Surveillance Act of 1978, and specified provisions of the Federal criminal code (including those governing wiretaps for criminal investigations), as the ''exclusive means by which domestic electronic surveillance . . . may be conducted'' pursuant to law (18 U.S.C. 2511(2)(f));

Whereas the Foreign Intelligence Surveillance Act of 1978 establishes the Foreign Intelligence Surveillance Court (commonly referred to as the ''FISA court''), and the procedures by which the United States Government may obtain a court order authorizing electronic surveillance (commonly referred to as a ''FISA warrant'') for foreign intelligence collection in the United States;

Whereas Congress created the FISA court to review wiretapping applications for domestic electronic surveillance to be conducted by any Federal agency;

Whereas the Foreign Intelligence Surveillance Act of 1978 provides specific exceptions that allow the President to authorize warrantless electronic surveillance for foreign intelligence purposes (1) in emergency situations, provided an application for judicial approval from a FISA court is made within 72 hours; and (2) within 15 calendar days following a declaration of war by Congress;

Whereas the Foreign Intelligence Surveillance Act of 1978 makes criminal any electronic surveillance not authorized by statute;

Whereas the Foreign Intelligence Surveillance Act of 1978 has been amended over time by Congress since the September 11, 2001, attacks on the United States;

Whereas President George W. Bush has confirmed that his administration engages in warrantless electronic surveillance of Americans inside the United States and that he has authorized such warrantless surveillance more than 30 times since September 11, 2001; and

Whereas Senate Joint Resolution 23 (107th Congress), as adopted by the Senate on September 14, 2001, and House Joint Resolution 64 (107th Congress), as adopted by the House of Representatives on September 14, 2001, together enacted as the Authorization for Use of Military Force (Public Law 107-40), to authorize military action against those responsible for the attacks on September 11, 2001, do not contain legal authorization nor approve of domestic electronic surveillance, including domestic electronic surveillance of United States citizens, without a judicially approved warrant: Now, therefore, be it

Resolved, That Senate Joint Resolution 23 (107th Congress), as adopted by the Senate on September 14, 2001, and subsequently enacted as the Authorization for Use of Military Force (Public Law 107–40) does not authorize warrantless domestic surveillance of United States citizens.

Mr. LEAHY. Mr. President, today I am submitting this resolution expressing the sense of the Senate that the Authorization for Use of Military Force, which Congress passed to authorize military action against those responsible for the attacks on September 11, 2001, did not authorize warrantless eavesdropping on American citizens.

As Justice O'Connor underscored recently, even war ''is not a blank check for the President when it comes to the rights of the Nation's citizens.''

Now that the illegal spying of Americans has become public and the President has acknowledged the 4-year-old program, the Bush administration's lawyers are contending that Congress authorized it. The September 2001 Authorization to Use Military Force did no such thing. Republican Senators also know it and a few have said so publicly. We all know it. The liberties and rights that define us as Americans and the system of checks and balances that serve to preserve them should not be sacrificed to threats of terrorism or to the expanding power of the government. In the days immediately following those attacks, I said, and I continue to believe, that the terrorists win if they frighten us into sacrificing our freedoms and what defines us as Americans.

I well remember the days immediately after the 9/11 attacks. I helped open the Senate to business the next day. I said then, on September 12, 2001:

''If we abandon our democracy to battle them, they win. . . . We will maintain our democracy, and with justice, we will use our strength. We will not lose our commitment to the rule of law, no matter how much the provocation, because that rule of law has protected us throughout the centuries. It has created our democracy. It has made us what we are in history. We are a just and good Nation.''

I joined with others, Republican and Democrats, and we engaged in round-the-clock efforts over the next months in connection with what came to be the USA PATRIOT Act. During those days the Bush administration never asked us for this surveillance authority or to amend the Foreign Intelligence Surveillance Act to accommodate such a program.

Just as we cannot allow ourselves to be lulled into a sense of false comfort when it comes to our national security, we cannot allow ourselves to be lulled into a blind trust regarding our freedoms and rights. The Framers built checks and balances into our system specifically to counter such abuses and undue assertions of power. We must remain vigilant on all fronts or we stand to lose these rights forever. Once lost or eroded, liberty is difficult if not impossible to restore. The Bush administration's after-the-fact claims about the breadth of the Authorization to Use Military Force—as recently as this week, in a document prepared at the White House's behest by the Department of Justice—are the latest in a long line of manipulations of the law.

We have also seen this type of overreaching in that same Justice Department office's twisted interpretation of the torture statute, an analysis that had to be withdrawn; with the detention of suspects without charges and denial of access to counsel; and with the misapplication of the material witness statute as a sort of general preventive detention law. Such abuses serve to harm our national security as well as our civil liberties.

In addition, the press reports that the Pentagon maintains secret databases containing information on a wide cross-section of ordinary Americans, and that the FBI is monitoring law-abiding citizens in the exercise of their First Amendment freedoms. When I worked with Senator WYDEN and others in 2003 to stop Admiral Poindexter's Total Information Awareness program, an effort designed to datamine information on Americans—and we meant it. And when I added a reporting requirement on Carnivore, the FBI's e-mail monitoring program, to the Department of Justice Authorizations law in 2002, we meant it. We demanded that Congress be kept informed and that any such program not proceed without congressional authorization.

The New York Times reported that after September 11, 2001, when former Attorney General John Ashcroft loosened restrictions on the FBI to permit it to monitor Web sites, mosques, and other public entities, ''the FBI has used that authority to investigate not only groups with suspected ties to foreign terrorists, but also protest groups suspected of having links to violent or disruptive activities.'' When I learned of such efforts and that they reportedly included monitoring Quakers in Florida and possibly Vermont, I wrote to the Secretary of Defense demanding an answer. That was a month ago. So far he has refused to provide that answer.

Now we have learned that President Bush has, for more than four years, secretly allowed the warrantless wiretapping of Americans inside the United States. And we read in the press that sources at the FBI say that much of what was forwarded to them to investigate was worthless and led to dead ends. That is a dangerous diversion of our investigative resources away from those who pose real threats, while precious time and effort is devoted to looking into the lives of law-abiding Americans.

The United States Supreme Court has consistently held for nearly 40 years, since its landmark decision in Katz v. United States, that the monitoring and recording of private conversations constitutes a ''search and seizure'' within the meaning of the Fourth Amendment. Congress enacted the Foreign Intelligence Surveillance Act of 1978, FISA, to provide a legal mechanism for the government to engage in electronic surveillance of Americans in connection with intelligence gathering. The Foreign Intelligence Surveillance Act, along with the criminal wiretap authority in title 18 of the United States Code, together provide the exclusive means by which the Government may intercept domestic electronic communications pursuant to the rule of law.

The Foreign Intelligence Surveillance Act has been amended over time, and it has been adjusted several times since the 9/11 attacks. Indeed, much of the PATRIOT Act was devoted to modifying FISA to make it easier to obtain FISA warrants. But the PATRIOT Act did not amend FISA to give the Government the authority to conduct warrantless surveillance of American citizens.

If the Bush administration believed that the law was inadequate to deal with the threat of terrorism within our boundaries, it should have come to Congress and sought to change the law. It did not. Indeed, Attorney General Gonzales admitted at a press conference on December 19, 2005, that the Administration did not seek to amend FISA to authorize the NSA spying program because it was advised that ''it was not something we could likely get.''

I chaired the Senate Judiciary Committee in 2001 and 2002, when the President's secret eavesdropping program apparently began. I was not informed of the program. I learned about it for the first time in the press last month. I thank heaven and the Constitution that we still have a free press.

The Bush administration is now arguing that when Congress authorized the use of force in September 2001 to attack al Qaeda in Afghanistan, it authorized warrantless searches and eavesdropping on American citizens. I voted for that authorization, and I know that Congress did not sign a blank check. The notion that Congress authorized warrantless surveillance in the AUMF is utterly inconsistent with the Attorney General's admission that Congress was not asked for such authorization because it was assumed that Congress would say no.

Former Senate Majority Leader Tom Daschle, who helped negotiate the use of force resolution with the White House, has confirmed that the subject of warrantless wiretaps of American citizens never came up, that he did not and never would have supported giving authority to the President for such wiretaps, and that he is ''confident that the 98 senators who voted in favor of authorization of force against al Qaeda did not believe that they were also voting for warrantless domestic surveillance.''

Senator Daschle also noted that the Bush administration sought to add language to the resolution that would have explicitly authorized the use of force ''in the United States,'' but Congress refused to grant the President such sweeping power. Maybe that was this Administration's covert way to seek the authority to spy on Americans, but Congress did not grant any such authority.

Spying on Americans without first obtaining the requisite warrants is illegal, unnecessary and wrong. No President can simply declare when he wishes to follow the law and when he chooses not to, especially when it comes to the hard-won rights of the American people.

The resolution I submit today is intended to help set the record straight. It is an important first step toward restoring checks and balances between the co-equal branches of government. I urge all Senators to support it.

Mr. KENNEDY. Mr. President, what is past is prologue. Today, we see history repeating itself. In 1978, President Carter signed into law the ''Foreign Intelligence Surveillance Act,'' successfully concluding years of debate on the power of the President to conduct national security wiretapping.

As a result of lengthy hearings and consultation, Congress enacted that law with broad bipartisan support. Its purpose was clear—to put a check on the power of the President to use wiretaps in the name of national security. One of the clear purposes of that law was to require the government to obtain a judicial warrant for all electronic surveillance in the United States in which communications of U.S. citizens might be intercepted. The Act established a secret court, the Foreign Intelligence Surveillance Court, to review wiretapping applications and guarantee that any such electronic surveillance followed the rule of law. Since 1979, the special court has approved nearly 19,000 applications and denied only 4. Last year, the Administration reached an all-time-high with the number of applications granted.

In the Foreign Intelligence Surveillance Act, Congress established the exclusive means by which electronic surveillance could be conducted in the United States for national security purposes. One of the principal goals of the legislation was to ensure that information obtained from illegal wiretaps could not be used to obtain a warrant from the Foreign Intelligence Surveillance Court. We even made sure that there would be criminal penalties for anyone who failed to comply with these rules.

The PATRIOT Act did not give the President the authority to spy on anyone without impartial judicial review—and neither did the Joint Resolution, enacted in 2001, authorizing the use of force against those responsible for the attacks of September 11th.

The President seemed to agree. In 2004, in Buffalo he stated categorically that ''any time that you hear the United States talking about a wiretap, it requires a court order.'' He said that ''Nothing had changed—when we're talking about chasing down terrorists, we're talking about getting a court order before we do so.''

Now, however, the President and the administration claim they do not have to comply with the law. Just yesterday, the administration again asserted

its constitutional authority to eavesdrop on any person within the United States—without judicial or legislative oversight and it claims that the Congress implicitly granted such power in the Joint Resolution of 2001.

But that Joint Resolution says nothing about domestic electronic surveillance. As Justice O'Connor has said, ''A state of war is not a blank check for the president when it comes to the rights of the nation's citizens.''

The bipartisan 9/11 Commission made clear that the Executive Branch has the burden of proof to justify why a particular governmental power should be retained—and Congress has the responsibility to see that adequate guidelines and oversight are made available.

The Executive Branch has failed to meet the 9/11 Commissioners' burden of proof. The American people are not convinced that these surveillance methods achieve the right balance between our national security and protection of our civil liberties.

These issues go to the heart of what it means to have a free society. If President Bush can make his own rules for domestic surveillance, Big Brother has run amok. If the President believes that winning the war on terror requires new surveillance capabilities, he has a responsibility to work with Congress to make appropriate changes in existing law. He is not above the law.

Congress and the American people deserve full and honest answers about the Administration's domestic electronic surveillance activities. On December 22, 2005, I asked the President to provide us with answers before the Senate Judiciary Committee began hearings on Judge Alito's nomination to the Supreme Court. We got no response. The Senate Judiciary Committee is scheduled to begin separate hearings on February 6 on the President's actions. Instead of providing us with the documents the Administration relied upon, the Justice Department continues to circulate summaries and ''white papers'' on the legal authorities it purports to have to ignore the law. It now appears that the President did so on at least thirty occasions after September 11. There is no legitimate purpose in denying access by Members of Congress to all of the legal thought and analysis that the President relied upon when he authorized these activities.

Every 45 days, the President ordered these activities to be reviewed by the Attorney General, the White House Counsel and the Inspector General of the National Security Agency. That's not good enough. These are all executive branch appointees who report directly to the President.

Congress spent seven years considering and enacting the Foreign Intelligence Surveillance Act. It was not a hastily conceived idea. We had broad agreement that both Congressional oversight and judicial oversight were fundamental—even during emergencies or times of war, which is why we established a secret court to expedite the review of sensitive applications from the government.

Now, the administration has made a unilateral decision that Congressional and judicial oversight can be discarded, in spite of what the law obviously requires. We need a thorough investigation of these activities. Congress and the American people deserve answers, and they deserve answers now.

SENATE RESOLUTION 351—RESPONDING TO THE THREAT POSED BY IRAN'S NUCLEAR PROGRAM

Mr. BAYH submitted the following resolution; which was referred to the Committee on Foreign Relations:

S. RES. 351

Whereas Iran is precipitating a grave nuclear crisis with the international community that directly impacts the national security of the United States and the efficacy of the International Atomic Energy Agency (IAEA) and the Treaty on the Non-Proliferation of Nuclear Weapons, done at Washington, London, and Moscow July 1, 1968, and entered into force March 5, 1970 (commonly referred to as the ''Nuclear Non-Proliferation Treaty'');

Whereas the United States welcomes a diplomatic solution to the nuclear crisis, but the Government of Iran continues to reject a peaceful resolution to the matter;

Whereas, although the Government of Iran agreed to suspend uranium enrichment activities and to sign and ratify the IAEA's Additional Protocol on expansive, intrusive no-notice inspections in 2003, it has repeatedly failed to live up to its obligations under this agreement;

Whereas the Government of Iran broke IAEA seals on some centrifuges in September 2004, converted uranium to a gas needed for enrichment in May 2005, limited IAEA inspectors to a few sites, and said it would restart uranium conversion activities;

Whereas the Board of Governors of the IAEA declared in September 2005 that Iran was in non-compliance of its Nuclear Non-Proliferation Treaty obligations;

Whereas Iran announced on January 3, 2006, that it would resume uranium ''research'' activities at Natanz and invited IAEA to witness the breaking of IAEA seals at the facility;

Whereas the Government of Iran has acknowledged deceiving the IAEA for the past 18 years for not disclosing an uranium enrichment facility in Natanz and a heavy water production plant in Arak;

Whereas the Government of Iran's human rights practices and strict limits on democracy have been consistently criticized by United Nations reports;

Whereas the Department of State stated in its most recent Country Reports on Human Rights Practices that Iran's already poor human rights record ''worsened'' during the previous year and deemed Iran a country ''of particular concern'' in its most recent International Religious Freedom Report;

Whereas the Government of Iran funds terror and rejectionist groups in Gaza and the West Bank, Lebanon, Iraq, and Afghanistan and is providing material support to groups directly involved in the killing of United States citizens;

Whereas Iran has been designated by the United States as a state sponsor of terrorism since 1984, and the Department of State said in its most recent Country Reports on Terrorism that Iran ''remained the most active state sponsor of terrorism in 2004'';

Whereas President of Iran Mahmoud Ahmadinejad has made repeated anti-American and anti-semitic statements, including denying the occurrence of the Holocaust and Israel's right to exist, and called on people to imagine a world without the United States;

Whereas Iran's recent acquisition of new anti-ship capabilities to block the Strait of Hormuz at the entrance to the Persian Gulf and the decision by the Government of Russia to sell the Government of Iran $1,000,000,000 in weapons, mostly for 29 anti-aircraft missile systems, is most regrettable and should dampen United States-Russian relations;

Whereas the behavior of the Government of Iran does not reflect that country's rich history and the democratic aspirations of most people in Iran;

Whereas the people of the United States stand with the people of Iran in support of democracy, the rule of law, religious freedom, and regional and global stability;

Whereas, although Iran is subject to a range of unilateral sanctions and some third country and foreign entities sanctions, these sanctions have not been fully implemented;

Whereas Iran remains vulnerable to international sanctions, especially with respect to financial services and foreign investment in its petroleum sector and oil sales, few foreign nations have joined the United States in attempting to isolate the regime in Iran and compel compliance with Iran's international obligations;

Whereas, although Iran may be one of the world's largest exporters of oil, it does not have the refining capacity to make the gasoline necessary to make its economy run and currently imports 40 percent of its refined gasoline from abroad;

Whereas more complete implementation of United States sanctions laws and the adoption of additional statutes would improve the chances of a diplomatic solution to the nuclear crisis with Iran;

Whereas President George W. Bush has for 4 years given too little attention to the growing nuclear problem in Iran beyond rhetorical sound bites and has carried out an Iran policy consisting of loud denunciations followed by minimal action and ultimate deference of managing the crisis to Europe, a policy that has been riddled with contradiction and inconsistency and damaging to United States national security;

Whereas, had President Bush effectively marshaled world opinion in 2002 and not wasted valuable time, diverted resources, and ignored the problem in Iran, the United States would not be faced with the full extent of the current nuclear crisis in Iran;

Whereas action now is imperative and time is of the essence; and

Whereas the opportunity the United States has to avoid the choice between military action and a nuclear Iran may be measured only in months: Now, therefore, be it

Resolved, That it is the sense of the Senate that—

(1) the United States should cut assistance to countries whose companies are investing in Iran's energy sector, including pipelines to export Iranian crude;

(2) supplies of refined gasoline to Iran should be cut off;

(3) there should be a worldwide, comprehensive ban on sales of weapons to Iran, including from Russia and China;

(4) the United Nations Security Council should impose an intrusive IAEA-led weapons of mass destruction inspection regime on Iran similar to that imposed on Iraq after the 1991 Persian Gulf war;