Pomeroy
Price (NC)
Rahall
Rangel
Rehberg
Renzi
Reyes
Richardson
Rodriguez
Ros-Lehtinen
Ross
Rothman
Roybal-Allard
Ruppersberger
Rush
Ryan (OH)
Salazar
Sali
Sánchez, Linda T.
Sanchez, Loretta
Sarbanes
Schakowsky
Schiff
Schwartz
Scott (GA)
Scott (VA)
Serrano
Sestak
Shea-Porter
Sherman
Shuler
Sires
Skelton
Slaughter
Smith (WA)
Snyder
Solis
Spratt
Stark
Stupak
Sutton
Tanner
Tauscher
Taylor
Terry
Thompson (CA)
Thompson (MS)
Tierney
Towns
Tsongas
Udall (CO)
Udall (NM)
Van Hollen
Velázquez
Visclosky
Walz (MN)
Wasserman Schultz
Waters
Watson
Watt
Waxman
Weiner
Welch (VT)
Wexler
Wilson (OH)
Woolsey
Wu
Wynn
Yarmuth
Young (AK)

NOT VOTING—13

Bono
Carson
Cubin
Doyle
Everett
Jindal
Kucinich
Mack
Marshall
Oberstar
Paul
Royce
Weller

ANNOUNCEMENT BY THE SPEAKER PRO TEMPORE

The SPEAKER pro tempore (during the vote). Members are advised there are 2 minutes remaining on this vote.

□ 1804

Mr. ALTMIRE changed his vote from ''no'' to ''aye.''

So the motion to recommit was rejected.

The result of the vote was announced as above stated.

The SPEAKER pro tempore. The question is on the passage of the bill.

The question was taken; and the Speaker pro tempore announced that the ayes appeared to have it.

Mr. SCOTT of Georgia. Mr. Speaker, on that I demand the yeas and nays.

The yeas and nays were ordered.

The SPEAKER pro tempore. This will be a 5-minute vote.

The vote was taken by electronic device, and there were—yeas 291, nays 127, not voting 14, as follows:

[Roll No. 1118]

YEAS—291

Abercrombie
Ackerman
Allen
Altmire
Andrews
Arcuri
Baca
Bachus
Baird
Baldwin
Barrow
Bartlett (MD)
Bean
Becerra
Berkley
Berman
Berry
Biggert
Bishop (GA)
Bishop (NY)
Blumenauer
Bonner
Boren
Boswell
Boucher
Boyd (FL)
Boyda (KS)
Brady (PA)
Braley (IA)
Brown, Corrine
Buchanan
Butterfield
Calvert
Capito
Capps
Capuano
Cardoza
Carnahan
Carney
Castle
Castor
Chabot
Chandler
Clarke
Clay
Cleaver
Clyburn
Cohen
Conyers
Cooper
Costa
Costello
Courtney
Cramer
Crowley
Cuellar
Cummings
Davis (AL)
Davis (CA)
Davis (IL)
Davis, Lincoln
DeFazio
DeGette
Delahunt
DeLauro
Dent
Diaz-Balart, L.
Diaz-Balart, M.
Dicks
Dingell
Doggett
Donnelly
Dreier
Edwards
Ehlers
Ellison
Ellsworth
Emanuel
Emerson
Engel
English (PA)
Eshoo
Etheridge
Farr
Fattah
Ferguson
Filner
Fortenberry
Frank (MA)
Gallegly
Gerlach
Giffords
Gilchrest
Gillibrand
Gonzalez
Gordon
Graves
Green, Al
Green, Gene
Grijalva
Gutierrez
Hall (NY)
Hare
Harman
Hastings (FL)
Hayes
Heller
Herseth Sandlin
Higgins
Hill
Hinchey
Hinojosa
Hirono
Hobson
Hodes
Holden
Holt
Honda
Hooley
Hoyer
Inslee
Israel
Jackson (IL)
Jackson-Lee (TX)
Jefferson
Johnson (GA)
Johnson (IL)
Johnson, E. B.
Jones (NC)
Jones (OH)
Kagen
Kanjorski
Kaptur
Kennedy
Kildee
Kilpatrick
Kind
King (NY)
Klein (FL)
Kline (MN)
Knollenberg
LaHood
Lampson
Langevin
Lantos
Larsen (WA)
Larson (CT)
Latham
LaTourette
Lee
Levin
Lewis (CA)
Lewis (GA)
Lipinski
LoBiondo
Loebsack
Lofgren, Zoe
Lowey
Lungren, Daniel E.
Lynch
Mahoney (FL)
Maloney (NY)
Markey
Marshall
Matheson
Matsui
McCarthy (NY)
McCollum (MN)
McCotter
McDermott
McGovern
McHugh
McIntyre
McKeon
McNerney
McNulty
Meek (FL)
Meeks (NY)
Melancon
Michaud
Miller (FL)
Miller (MI)
Miller (NC)
Miller, Gary
Miller, George
Mitchell
Mollohan
Moore (KS)
Moore (WI)
Moran (VA)
Murphy (CT)
Murphy, Patrick
Murphy, Tim
Murtha
Nadler
Napolitano
Neal (MA)
Obey
Olver
Ortiz
Pallone
Pascrell
Pastor
Payne
Perlmutter
Peterson (MN)
Pomeroy
Porter
Price (NC)
Pryce (OH)
Rahall
Rangel
Regula
Reichert
Renzi
Reyes
Richardson
Rodriguez
Rogers (AL)
Rogers (MI)
Ros-Lehtinen
Ross
Rothman
Roybal-Allard
Ruppersberger
Rush
Ryan (OH)
Sánchez, Linda T.
Sanchez, Loretta
Sarbanes
Schakowsky
Schiff
Schwartz
Scott (GA)
Scott (VA)
Serrano
Sestak
Shays
Shea-Porter
Sherman
Shuler
Simpson
Sires
Skelton
Slaughter
Smith (NJ)
Smith (WA)
Snyder
Solis
Souder
Space
Spratt
Stark
Stearns
Stupak
Sutton
Tanner
Tauscher
Taylor
Thompson (CA)
Thompson (MS)
Tiberi
Tierney
Towns
Tsongas
Turner
Udall (CO)
Udall (NM)
Upton
Van Hollen
Velázquez
Visclosky
Walz (MN)
Wasserman Schultz
Waters
Watson
Watt
Waxman
Weiner
Welch (VT)
Weldon (FL)
Wexler
Whitfield
Wilson (NM)
Wilson (OH)
Wolf
Woolsey
Wu
Wynn
Yarmuth
Young (FL)

NAYS—127

Aderholt
Akin
Alexander
Bachmann
Baker
Barrett (SC)
Barton (TX)
Bilbray
Bilirakis
Bishop (UT)
Blackburn
Blunt
Boehner
Boozman
Boustany
Brady (TX)
Broun (GA)
Brown (SC)
Brown-Waite, Ginny
Burgess
Camp (MI)
Campbell (CA)
Cannon
Cantor
Carter
Coble
Cole (OK)
Conaway
Crenshaw
Culberson
Davis (KY)
Davis, David
Davis, Tom
Deal (GA)
Doolittle
Drake
Duncan
Fallin
Feeney
Flake
Forbes
Fossella
Foxx
Franks (AZ)
Frelinghuysen
Garrett (NJ)
Gingrey
Gohmert
Goode
Goodlatte
Granger
Hall (TX)
Hastert
Hastings (WA)
Hensarling
Herger
Hoekstra
Hulshof
Hunter
Inglis (SC)
Issa
Johnson, Sam
Jordan
Keller
King (IA)
Kingston
Kirk
Kuhl (NY)
Lamborn
Lewis (KY)
Linder
Lucas
Manzullo
Marchant
McCarthy (CA)
McCaul (TX)
McCrery
McHenry
McMorris Rodgers
Mica
Moran (KS)
Musgrave
Myrick
Neugebauer
Nunes
Pearce
Pence
Peterson (PA)
Petri
Pickering
Pitts
Platts
Poe
Price (GA)
Putnam
Radanovich
Ramstad
Rehberg
Reynolds
Rogers (KY)
Rohrabacher
Roskam
Royce
Ryan (WI)
Sali
Saxton
Schmidt
Sensenbrenner
Sessions
Shadegg
Shimkus
Shuster
Smith (NE)
Smith (TX)
Sullivan
Tancredo
Terry
Thornberry
Tiahrt
Walberg
Walden (OR)
Walsh (NY)
Wamp
Westmoreland
Wicker
Wilson (SC)
Young (AK)

NOT VOTING—14

Bono
Burton (IN)
Buyer
Carson
Cubin
Doyle
Everett
Jindal
Kucinich
Mack
Oberstar
Paul
Salazar
Weller

ANNOUNCEMENT BY THE SPEAKER PRO TEMPORE

The SPEAKER pro tempore (during the vote). Members are advised less than 2 minutes are remaining on this vote.

□ 1812

So the bill was passed.

The result of the vote was announced as above recorded.

A motion to reconsider was laid on the table.

Stated against:

Mr. BURTON of Indiana. Mr. Speaker, on rollcall No. 1118, had I been present, I would have voted ''nay.''

AUTHORIZING THE CLERK TO MAKE CORRECTIONS IN ENGROSSMENT OF H.R. 3915, MORTGAGE REFORM AND ANTI-PREDATORY LENDING ACT OF 2007

Mr. FRANK of Massachusetts. Mr. Speaker, I ask unanimous consent that the Clerk be authorized to make technical corrections in the engrossment of H.R. 3915, to include corrections in spelling, punctuation, references to line numbers, section numbering, and cross-referencing, and the insertion of appropriate headings.

The SPEAKER pro tempore. Is there objection to the request of the gentleman from Massachusetts?

There was no objection.

RESTORE ACT OF 2007

The SPEAKER pro tempore. Pursuant to House Resolution 746, proceedings will now resume on the bill (H.R. 3773) to amend the Foreign Intelligence Surveillance Act of 1978 to establish a procedure for authorizing certain acquisitions of foreign intelligence, and for other purposes.

The Clerk read the title of the bill.

The text of the bill is as follows:

H.R 3773

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled,

SECTION 1. SHORT TITLE; TABLE OF CONTENTS.

(a) SHORT TITLE.—This Act may be cited as the ''Responsible Electronic Surveillance That is Overseen, Reviewed, and Effective Act of 2007'' or ''RESTORE Act of 2007''.

(b) TABLE OF CONTENTS.—The table of contents for this Act is as follows:

Sec. 1. Short title; table of contents.
Sec. 2. Clarification of electronic surveillance of non-United States persons outside the United States.

Sec. 3. Procedure for authorizing acquisitions of communications of non-United States persons located outside the United States.
Sec. 4. Emergency authorization of acquisitions of communications of non-United States persons located outside the United States.
Sec. 5. Oversight of acquisitions of communications of non-United States persons located outside of the United States.
Sec. 6. Foreign Intelligence Surveillance Court en banc.
Sec. 7. Audit of warrantless surveillance programs.
Sec. 8. Record-keeping system on acquisition of communications of United States persons.
Sec. 9. Authorization for increased resources relating to foreign intelligence surveillance.
Sec. 10. Reiteration of FISA as the exclusive means by which electronic surveillance may be conducted for gathering foreign intelligence information.
Sec. 11. Technical and conforming amendments.
Sec. 12. Sunset; transition procedures.

SEC. 2. CLARIFICATION OF ELECTRONIC SURVEILLANCE OF NON-UNITED STATES PERSONS OUTSIDE THE UNITED STATES.

Section 105A of the Foreign Intelligence Surveillance Act of 1978 (50 U.S.C. 1801 et seq.) is amended to read as follows:

''CLARIFICATION OF ELECTRONIC SURVEILLANCE OF NON-UNITED STATES PERSONS OUTSIDE THE UNITED STATES

''SEC. 105A. (a) FOREIGN TO FOREIGN COMMUNICATIONS.—Notwithstanding any other provision of this Act, a court order is not required for the acquisition of the contents of any communication between persons that are not United States persons and are not located within the United States for the purpose of collecting foreign intelligence information, without respect to whether the communication passes through the United States or the surveillance device is located within the United States.

''(b) COMMUNICATIONS OF NON-UNITED STATES PERSONS OUTSIDE OF THE UNITED STATES.—Notwithstanding any other provision of this Act other than subsection (a), electronic surveillance that is directed at the acquisition of the communications of a person that is reasonably believed to be located outside the United States and not a United States person for the purpose of collecting foreign intelligence information (as defined in paragraph (1) or (2)(A) of section 101(e)) by targeting that person shall be conducted pursuant to—

''(1) an order approved in accordance with section 105 or 105B; or

''(2) an emergency authorization in accordance with section 105 or 105C.''.

SEC. 3. PROCEDURE FOR AUTHORIZING ACQUISITIONS OF COMMUNICATIONS OF NON-UNITED STATES PERSONS LOCATED OUTSIDE THE UNITED STATES.

Section 105B of the Foreign Intelligence Surveillance Act of 1978 (50 U.S.C. 1801 et seq.) is amended to read as follows:

''PROCEDURE FOR AUTHORIZING ACQUISITIONS OF COMMUNICATIONS OF NON-UNITED STATES PERSONS LOCATED OUTSIDE THE UNITED STATES

''SEC. 105B. (a) IN GENERAL.—Notwithstanding any other provision of this Act, the Director of National Intelligence and the Attorney General may jointly apply to a judge of the court established under section 103(a) for an ex parte order, or the extension of an order, authorizing for a period of up to one year the acquisition of communications of persons that are reasonably believed to be located outside the United States and not United States persons for the purpose of collecting foreign intelligence information (as defined in paragraph (1) or (2)(A) of section 101(e)) by targeting those persons.

''(b) APPLICATION INCLUSIONS.—An application under subsection (a) shall include—

''(1) a certification by the Director of National Intelligence and the Attorney General that—

''(A) the targets of the acquisition of foreign intelligence information under this section are persons reasonably believed to be located outside the United States;

''(B) the targets of the acquisition are reasonably believed to be persons that are not United States persons;

''(C) the acquisition involves obtaining the foreign intelligence information from, or with the assistance of, a communications service provider or custodian, or an officer, employee, or agent of such service provider or custodian, who has authorized access to the communications to be acquired, either as they are transmitted or while they are stored, or equipment that is being or may be used to transmit or store such communications; and

''(D) a significant purpose of the acquisition is to obtain foreign intelligence information (as defined in paragraph (1) or (2)(A) of section 101(e)); and

''(2) a description of—

''(A) the procedures that will be used by the Director of National Intelligence and the Attorney General during the duration of the order to determine that there is a reasonable belief that the targets of the acquisition are persons that are located outside the United States and not United States persons;

''(B) the nature of the information sought, including the identity of any foreign power against whom the acquisition will be directed;

''(C) minimization procedures that meet the definition of minimization procedures under section 101(h) to be used with respect to such acquisition; and

''(c) SPECIFIC PLACE NOT REQUIRED.—An application under subsection (a) is not required to identify the specific facilities, places, premises, or property at which the acquisition of foreign intelligence information will be directed.

''(d) REVIEW OF APPLICATION.—Not later than 15 days after a judge receives an application under subsection (a), the judge shall review such application and shall approve the application if the judge finds that—

''(1) the proposed procedures referred to in subsection (b)(2)(A) are reasonably designed to determine whether the targets of the acquisition are located outside the United States and not United States persons;

''(2) the proposed minimization procedures referred to in subsection (b)(2)(C) meet the definition of minimization procedures under section 101(h); and

''(3) the guidelines referred to in subsection (b)(2)(D) are reasonably designed to ensure that an application is filed under section 104, if otherwise required by this Act, when the Federal Government seeks to conduct electronic surveillance of a person reasonably believed to be located in the United States.

''(e) ORDER.—

''(1) IN GENERAL.—A judge approving an application under subsection (d) shall issue an order—

''(A) authorizing the acquisition of the contents of the communications as requested, or as modified by the judge;

''(B) requiring the communications service provider or custodian, or officer, employee, or agent of such service provider or custodian, who has authorized access to the information, facilities, or technical assistance necessary to accomplish the acquisition to provide such information, facilities, or technical assistance necessary to accomplish the acquisition and to produce a minimum of interference with the services that provider, custodian, officer, employee, or agent is providing the target of the acquisition;

''(C) requiring such communications service provider, custodian, officer, employee, or agent, upon the request of the applicant, to maintain under security procedures approved by the Attorney General and the Director of National Intelligence any records concerning the acquisition or the aid furnished;

''(D) directing the Federal Government to—

''(i) compensate, at the prevailing rate, a person for providing information, facilities, or assistance pursuant to such order; and

''(ii) provide a copy of the portion of the order directing the person to comply with the order to such person; and

''(E) directing the applicant to follow—

''(i) the procedures referred to in subsection (b)(2)(A) as proposed or as modified by the judge;

''(ii) the minimization procedures referred to in subsection (b)(2)(C) as proposed or as modified by the judge; and

''(iii) the guidelines referred to in subsection (b)(2)(D) as proposed or as modified by the judge.

''(2) FAILURE TO COMPLY.—If a person fails to comply with an order issued under paragraph (1), the Attorney General may invoke the aid of the court established under section 103(a) to compel compliance with the order. Failure to obey an order of the court may be punished by the court as contempt of court. Any process under this section may be served in any judicial district in which the person may be found.

''(3) LIABILITY OF ORDER.—Notwithstanding any other law, no cause of action shall lie in any court against any person for providing any information, facilities, or assistance in accordance with an order issued under this subsection.

''(4) RETENTION OF ORDER.—The Director of National Intelligence and the court established under subsection 103(a) shall retain an order issued under this section for a period of not less than 10 years from the date on which such order is issued.

''(5) ASSESSMENT OF COMPLIANCE WITH MINIMIZATION PROCEDURES.—At or before the end of the period of time for which an acquisition is approved by an order or an extension under this section, the judge may assess compliance with the minimization procedures referred to in paragraph (1)(E)(ii) and the guidelines referred to in paragraph (1)(E)(iii) by reviewing the circumstances under which information concerning United States persons was acquired, retained, or disseminated.''.

SEC. 4. EMERGENCY AUTHORIZATION OF ACQUISITIONS OF COMMUNICATIONS OF NON-UNITED STATES PERSONS LOCATED OUTSIDE THE UNITED STATES.

Section 105C of the Foreign Intelligence Surveillance Act of 1978 (50 U.S.C. 1801 et seq.) is amended to read as follows:

''EMERGENCY AUTHORIZATION OF ACQUISITIONS OF COMMUNICATIONS OF NON-UNITED STATES PERSONS LOCATED OUTSIDE THE UNITED STATES

''SEC. 105C. (a) APPLICATION AFTER EMERGENCY AUTHORIZATION.—As soon as is practicable, but not more than 7 days after the Director of National Intelligence and the Attorney General authorize an acquisition

under this section, an application for an order authorizing the acquisition in accordance with section 105B shall be submitted to the judge referred to in subsection (b)(2) of this section for approval of the acquisition in accordance with section 105B.

''(b) EMERGENCY AUTHORIZATION.—Notwithstanding any other provision of this Act, the Director of National Intelligence and the Attorney General may jointly authorize the emergency acquisition of foreign intelligence information for a period of not more than 45 days if—

''(1) the Director of National Intelligence and the Attorney General jointly determine that—

''(A) an emergency situation exists with respect to an authorization for an acquisition under section 105B before an order approving the acquisition under such section can with due diligence be obtained;

''(B) the targets of the acquisition of foreign intelligence information under this section are persons reasonably believed to be located outside the United States;

''(C) the targets of the acquisition are reasonably believed to be persons that are not United States persons;

''(D) there are reasonable procedures in place for determining that the acquisition of foreign intelligence information under this section will be acquired by targeting only persons that are reasonably believed to be located outside the United States and not United States persons;

''(E) the acquisition involves obtaining the foreign intelligence information from, or with the assistance of, a communications service provider or custodian, or an officer, employee, or agent of such service provider or custodian, who has authorized access to the communications to be acquired, either as they are transmitted or while they are stored, or equipment that is being or may be used to transmit or store such communications;

''(F) a significant purpose of the acquisition is to obtain foreign intelligence information (as defined in paragraph (1) or (2)(A) of section 101(e)); and

''(G) minimization procedures to be used with respect to such acquisition activity meet the definition of minimization procedures under section 101(h); and

''(2) the Director of National Intelligence and the Attorney General, or their designees, inform a judge having jurisdiction to approve an acquisition under section 105B at the time of the authorization under this section that the decision has been made to acquire foreign intelligence information.

''(c) INFORMATION, FACILITIES, AND TECHNICAL ASSISTANCE.—Pursuant to an authorization of an acquisition under this section, the Attorney General may direct a communications service provider, custodian, or an officer, employee, or agent of such service provider or custodian, who has the lawful authority to access the information, facilities, or technical assistance necessary to accomplish such acquisition to—

''(1) furnish the Attorney General forthwith with such information, facilities, or technical assistance in a manner that will protect the secrecy of the acquisition and produce a minimum of interference with the services that provider, custodian, officer, employee, or agent is providing the target of the acquisition; and

''(2) maintain under security procedures approved by the Attorney General and the Director of National Intelligence any records concerning the acquisition or the aid furnished.''.

SEC. 5. OVERSIGHT OF ACQUISITIONS OF COMMUNICATIONS OF NON-UNITED STATES PERSONS LOCATED OUTSIDE OF THE UNITED STATES.

The Foreign Intelligence Surveillance Act of 1978 (50 U.S.C. 1801 et seq.) is amended by inserting after section 105C the following new section:

''OVERSIGHT OF ACQUISITIONS OF COMMUNICATIONS OF NON-UNITED STATES PERSONS LOCATED OUTSIDE OF THE UNITED STATES

''SEC. 105D. (a) APPLICATION; PROCEDURES; ORDERS.—Not later than 7 days after an application is submitted under section 105B(a) or an order is issued under section 105B(e), the Director of National Intelligence and the Attorney General shall submit to the appropriate committees of Congress—

''(1) in the case of an application, a copy of the application, including the certification made under section 105B(b)(1); and

''(2) in the case of an order, a copy of the order, including the procedures and guidelines referred to in section 105B(e)(1)(E).

''(b) QUARTERLY AUDITS.—

''(1) AUDIT.—Not later than 120 days after the date of the enactment of this section, and every 120 days thereafter until the expiration of all orders issued under section 105B, the Inspector General of the Department of Justice shall complete an audit on the implementation of and compliance with the procedures and guidelines referred to in section 105B(e)(1)(E) and shall submit to the appropriate committees of Congress, the Attorney General, the Director of National Intelligence, and the court established under section 103(a) the results of such audit, including, for each order authorizing the acquisition of foreign intelligence under section 105B—

''(A) the number of targets of an acquisition under such order that were later determined to be located in the United States;

''(B) the number of persons located in the United States whose communications have been acquired under such order;

''(C) the number and nature of reports disseminated containing information on a United States person that was collected under such order; and

''(D) the number of applications submitted for approval of electronic surveillance under section 104 for targets whose communications were acquired under such order.

''(2) REPORT.—Not later than 30 days after the completion of an audit under paragraph (1), the Attorney General shall submit to the appropriate committees of Congress and the court established under section 103(a) a report containing the results of such audit.

''(c) COMPLIANCE REPORTS.—Not later than 60 days after the date of the enactment of this section, and every 120 days thereafter until the expiration of all orders issued under section 105B, the Director of National Intelligence and the Attorney General shall submit to the appropriate committees of Congress and the court established under section 103(a) a report concerning acquisitions under section 105B during the previous 120-day period. Each report submitted under this section shall include a description of any incidents of non-compliance with an order issued under section 105B(e), including incidents of non-compliance by—

''(1) an element of the intelligence community with minimization procedures referred to in section 105B(e)(1)(E)(i);

''(2) an element of the intelligence community with procedures referred to in section 105B(e)(1)(E)(ii);

''(3) an element of the intelligence community with guidelines referred to in section 105B(e)(1)(E)(iii); and

''(4) a person directed to provide information, facilities, or technical assistance under such order.

''(d) REPORT ON EMERGENCY AUTHORITY.—The Director of National Intelligence and the Attorney General shall annually submit to the appropriate committees of Congress a report containing the number of emergency authorizations of acquisitions under section 105C and a description of any incidents of non-compliance with an emergency authorization under such section.

''(e) APPROPRIATE COMMITTEES OF CONGRESS DEFINED.—In this section, the term 'appropriate committees of Congress' means—

''(1) the Permanent Select Committee on Intelligence of the House of Representatives;

''(2) the Select Committee on Intelligence of the Senate; and

''(3) the Committees on the Judiciary of the House of Representatives and the Senate.''.

SEC. 6. FOREIGN INTELLIGENCE SURVEILLANCE COURT EN BANC.

Section 103 of the Foreign Intelligence Surveillance Act of 1978 (50 U.S.C. 1803) is amended by adding at the end the following new subsection:

''(g) In any case where the court established under subsection (a) or a judge of such court is required to review a matter under this Act, the court may, at the discretion of the court, sit en banc to review such matter and issue any orders related to such matter.''.

SEC. 7. AUDIT OF WARRANTLESS SURVEILLANCE PROGRAMS.

(a) AUDIT.—Not later than 180 days after the date of the enactment of this Act, the Inspector General of the Department of Justice shall complete an audit of all programs of the Federal Government involving the acquisition of communications conducted without a court order on or after September 11, 2001, including the Terrorist Surveillance Program referred to by the President in a radio address on December 17, 2005. Such audit shall include acquiring all documents relevant to such programs, including memoranda concerning the legal authority of a program, authorizations of a program, certifications to telecommunications carriers, and court orders.

(b) REPORT.—

(1) IN GENERAL.—Not later than 30 days after the completion of the audit under subsection (a), the Inspector General shall submit to the Permanent Select Committee on Intelligence and the Committee on the Judiciary of the House of Representatives and the Select Committee on Intelligence and the Committee on the Judiciary of the Senate a report containing the results of such audit, including all documents acquired pursuant to conducting such audit.

(2) FORM.—The report under paragraph (1) shall be submitted in unclassified form, but may include a classified annex.

(c) EXPEDITED SECURITY CLEARANCE.—The Director of National Intelligence shall ensure that the process for the investigation and adjudication of an application by the Inspector General or the appropriate staff of the Office of the Inspector General of the Department of Justice for a security clearance necessary for the conduct of the audit under subsection (a) is conducted as expeditiously as possible.

SEC. 8. RECORD-KEEPING SYSTEM ON ACQUISITION OF COMMUNICATIONS OF UNITED STATES PERSONS.

(a) RECORD-KEEPING SYSTEM.—The Director of National Intelligence and the Attorney General shall jointly develop and maintain a record-keeping system that will keep track of—

(1) the instances where the identity of a United States person whose communications were acquired was disclosed by an element of

the intelligence community (as defined in section 3(4) of the National Security Act of 1947 (50 U.S.C. 401a(4)) that collected the communications to other departments or agencies of the United States; and

(2) the departments and agencies of the Federal Government and persons to whom such identity information was disclosed.

(b) REPORT.—The Director of National Intelligence and the Attorney General shall annually submit to the Permanent Select Committee on Intelligence and the Committee on the Judiciary of the House of Representatives and the Select Committee on Intelligence and the Committee on the Judiciary of the Senate a report on the record-keeping system created under subsection (a), including the number of instances referred to in paragraph (1).

SEC. 9. AUTHORIZATION FOR INCREASED RESOURCES RELATING TO FOREIGN INTELLIGENCE SURVEILLANCE.

There are authorized to be appropriated the Department of Justice, for the activities of the Office of the Inspector General, the Office of Intelligence Policy and Review, and other appropriate elements of the National Security Division, and the National Security Agency such sums as may be necessary to meet the personnel and information technology demands to ensure the timely and efficient processing of—

(1) applications and other submissions to the court established under section 103(a) of the Foreign Intelligence Surveillance Act of 1978 (50 U.S.C. 1803(a));

(2) the audit and reporting requirements under—

(A) section 105D of such Act; and

(B) section 7; and

(3) the record-keeping system and reporting requirements under section 8.

SEC. 10. REITERATION OF FISA AS THE EXCLUSIVE MEANS BY WHICH ELECTRONIC SURVEILLANCE MAY BE CONDUCTED FOR GATHERING FOREIGN INTELLIGENCE INFORMATION.

(a) EXCLUSIVE MEANS.—Notwithstanding any other provision of law, the Foreign Intelligence Surveillance Act of 1978 (50 U.S.C. 1801 et seq.) shall be the exclusive means by which electronic surveillance may be conducted for the purpose of gathering foreign intelligence information.

(b) SPECIFIC AUTHORIZATION REQUIRED FOR EXCEPTION.—Subsection (a) shall apply until specific statutory authorization for electronic surveillance, other than as an amendment to the Foreign Intelligence Surveillance Act of 1978 (50 U.S.C. 1801 et seq.), is enacted. Such specific statutory authorization shall be the only exception to subsection (a).

SEC. 11. TECHNICAL AND CONFORMING AMENDMENTS.

(a) TABLE OF CONTENTS.—The table of contents in the first section of the Foreign Intelligence Surveillance Act of 1978 (50 U.S.C. 1801 et seq.) is amended by striking the items relating to sections 105A, 105B, and 105C and inserting the following new items:

''Sec. 105A. Clarification of electronic surveillance of non-United States persons outside the United States.

''Sec. 105B. Procedure for authorizing acquisitions of communications of non-United States persons located outside the United States.

''Sec. 105C. Emergency authorization of acquisitions of communications of non-United States persons located outside the United States.

''Sec. 105D. Oversight of acquisitions of communications of persons located outside of the United States.''.

(b) SECTION 103(e) OF FISA.—Section 103(e) of the Foreign Intelligence Surveillance Act of 1978 (50 U.S.C. 1803(e)) is amended—

(1) in paragraph (1), by striking ''105B(h) or''; and

(2) in paragraph (2), by striking ''105B(h) or''.

(c) REPEAL OF CERTAIN PROVISIONS OF THE PROTECT AMERICA ACT.—Sections 4 and 6 of the Protect America Act (Public Law 110–55) are hereby repealed.

SEC. 12. SUNSET; TRANSITION PROCEDURES.

(a) SUNSET OF NEW PROVISIONS.—

(1) IN GENERAL.—Except as provided in paragraph (2), effective on December 31, 2009—

(A) sections 105A, 105B, 105C, and 105D of the Foreign Intelligence Surveillance Act of 1978 (50 U.S.C. 1801 et seq.) are hereby repealed; and

(B) the table of contents in the first section of such Act is amended by striking the items relating to sections 105A, 105B, 105C, and 105D.

(2) ACQUISITIONS AUTHORIZED PRIOR TO SUNSET.—Any authorization or order issued under section 105B of the Foreign Intelligence Surveillance Act of 1978, as amended by this Act, in effect on December 31, 2009, shall continue in effect until the date of the expiration of such authorization or order.

(b) ACQUISITIONS AUTHORIZED PRIOR TO ENACTMENT.—

(1) EFFECT.—Notwithstanding the amendments made by this Act, an authorization of the acquisition of foreign intelligence information under section 105B of the Foreign Intelligence Surveillance Act of 1978 (50 U.S.C. 1801 et seq.) made before the date of the enactment of this Act shall remain in effect until the date of the expiration of such authorization or the date that is 180 days after such date of enactment, whichever is earlier.

(2) REPORT.—Not later than 30 days after the date of the expiration of all authorizations of acquisition of foreign intelligence information under section 105B of the Foreign Intelligence Surveillance Act of 1978 (as added by Public Law 110–55) made before the date of the enactment of this Act in accordance with paragraph (1), the Director of National Intelligence and the Attorney General shall submit to the Permanent Select Committee on Intelligence and the Committee on the Judiciary of the House of Representatives and the Select Committee on Intelligence and the Committee on the Judiciary of the Senate a report on such authorizations, including—

(A) the number of targets of an acquisition under section 105B of such Act (as in effect on the day before the date of the enactment of this Act) that were later determined to be located in the United States;

(B) the number of persons located in the United States whose communications have been acquired under such section;

(C) the number of reports disseminated containing information on a United States person that was collected under such section;

(D) the number of applications submitted for approval of electronic surveillance under section 104 of such Act based upon information collected pursuant to an acquisition authorized under section 105B of such Act (as in effect on the day before the date of the enactment of this Act); and

(E) a description of any incidents of non-compliance with an authorization under such section, including incidents of non-compliance by—

(i) an element of the intelligence community with procedures referred to in subsection (a)(1) of such section;

(ii) an element of the intelligence community with minimization procedures referred to in subsection (a)(5) of such section; and

(iii) a person directed to provide information, facilities, or technical assistance under subsection (e) of such section.

(3) INTELLIGENCE COMMUNITY DEFINED.—In this subsection, the term ''intelligence community'' has the meaning given the term in section 3(4) of the National Security Act of 1947 (50 U.S.C. 401a(4)).

The SPEAKER pro tempore. Pursuant to House Resolution 824, the further amendment printed in House Report 110–449 is adopted.

The text of the bill, as amended, is as follows:

H.R 3773

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled,

Strike all after the enacting clause and insert the following:

SECTION 1. SHORT TITLE; TABLE OF CONTENTS.

(a) SHORT TITLE.—This Act may be cited as the ''Responsible Electronic Surveillance That is Overseen, Reviewed, and Effective Act of 2007'' or ''RESTORE Act of 2007''.

(b) TABLE OF CONTENTS.—The table of contents for this Act is as follows:

Sec. 1. Short title; table of contents.
Sec. 2. Clarification of electronic surveillance of non-United States persons outside the United States.
Sec. 3. Additional authorization of acquisitions of communications of non-United States persons located outside the United States who may be communicating with persons inside the United States.
Sec. 4. Emergency authorization of acquisitions of communications of non-United States persons located outside the United Statesfwho may be communicating with persons inside the United States.
Sec. 5. 0versight of acquisitions of communications of non-United States persons located outside of the United States fNho may be communicating with persons inside the United States.
Sec. 6. Foreign Intelligence Surveillance Court en banco
Sec. 7. Foreign Intelligence Surveillance Court matters.
Sec. 8. Reiteration of FISA as the exclusive means by which electronic surveillance may be conducted for gathering foreign intelligence information.
Sec. 9. Enhancement of electronic surveillance authority in wartime and other collection.
Sec. 10. Audit of warrantless surveillance programs.
Sec. 11. Record-keeping system on acquisition of communications of United States persons.
Sec. 12. Authorization for increased resources relating to foreign intelligence surveillance.
Sec. 13. Document management system for applications for orders approving electronic surveillance.
Sec. 14. Training of intelligence community personnel in foreign intelligence collection matters.
Sec. 15. Information for Congress on the terrorist surveillance program and similar programs.
Sec. 16. Technical and conforming amendments.
Sec. 17. Sunset; transition procedures.

SEC. 2. CLARIFICATION OF ELECTRONIC SURVEILLANCE OF NON-UNITED STATES PERSONS OUTSIDE THE UNITED STATES.

Section 105A of the Foreign Intelligence Surveillance Act of 1978 (50 U.S.C. 1801 et seq.) is amended to read as follows:

''CLARIFICATION OF ELECTRONIC SURVEILLANCE OF NON-UNITED STATES PERSONS OUTSIDE THE UNITED STATES

''SEC. 105A. (a) FOREIGN TO FOREIGN COMMUNICATIONS.—

''(1) IN GENERAL.—Notwithstanding any other provision of this Act, a court order is not required for the acquisition of the contents of any communication between persons that are not known to be United States persons and are reasonably believed to be located outside the United States for the purpose of collecting foreign intelligence information, without respect to whether the communication passes through the United States or the surveillance device is located within the United States.

''(2) TREATMENT OF INADVERTENT INTERCEPTIONS.—If electronic surveillance referred to in paragraph (1) inadvertently collects a communication in which at least one party to the communication is located inside the United States or is a United States person, the contents of such communication shall be handled in accordance with minimization procedures adopted by the Attorney General that require that no contents of any communication to which a United States person is a party shall be disclosed, disseminated, or used for any purpose or retained for longer than 7 days unless a court order under section 105 is obtained or unless the Attorney General determines that the information indicates a threat of death or serious bodily harm to any person.

''(b) COMMUNICATIONS OF NON-UNITED STATES PERSONS OUTSIDE OF THE UNITED STATES.—Notwithstanding any other provision of this Act other than subsection (a), electronic surveillance that is directed at the acquisition of the communications of a person that is reasonably believed to be located outside the United States and not a United States person for the purpose of collecting foreign intelligence information (as defined in paragraph (1) or (2)(A) of section 101(e)) by targeting that person shall be conducted pursuant to—

''(1) an order approved in accordance with section 105 or 105B; or

''(2) an emergency authorization in accordance with section 105 or 105C.''.

SEC. 3. ADDITIONAL AUTHORIZATION OF ACQUISITIONS OF COMMUNICATIONS OF NON-UNITED STATES PERSONS LOCATED OUTSIDE THE UNITED STATES WHO MAY BE COMMUNICATING WITH PERSONS INSIDE THE UNITED STATES.

Section 105B of the Foreign Intelligence Surveillance Act of 1978 (50 U.S.C. 1801 et seq.) is amended to read as follows:

''ADDITIONAL AUTHORIZATION OF ACQUISITIONS OF COMMUNICATIONS OF NON-UNITED STATES PERSONS LOCATED OUTSIDE THE UNITED STATES WHO MAY BE COMMUNICATING WITH PERSONS INSIDE THE UNITED STATES.

''SEC. 105B. (a) IN GENERAL.—Notwithstanding any other provision of this Act, the Director of National Intelligence and the Attorney General may jointly apply to a judge of the court established under section 103(a) for an ex parte order, or the extension of an order, authorizing for a period of up to one year the acquisition of communications of persons that are reasonably believed to be located outside the United States and not United States persons for the purpose of collecting foreign intelligence information (as defined in paragraph (1) or (2)(A) of section 101(e)) by targeting those persons.

''(b) APPLICATION INCLUSIONS.—An application under subsection (a) shall include—

''(1) a certification by the Director of National Intelligence and the Attorney General that—

''(A) the targets of the acquisition of foreign intelligence information under this section are persons reasonably believed to be located outside the United States who may be communicating with persons inside the United States;

''(B) the targets of the acquisition are reasonably believed to be persons that are not United States persons;

''(C) the acquisition involves obtaining the foreign intelligence information from, or with the assistance of, a communications service provider or custodian, or an officer, employee, or agent of such service provider or custodian, who has authorized access to the communications to be acquired, either as they are transmitted or while they are stored, or equipment that is being or may be used to transmit or store such communications; and

''(D) a significant purpose of the acquisition is to obtain foreign intelligence information (as defined in paragraph (1) or (2)(A) of section 101(e)); and

''(2) a description of—

''(A) the procedures that will be used by the Director of National Intelligence and the Attorney General during the duration of the order to determine that there is a reasonable belief that the persons that are the targets of the acquisition are located outside the United States and not United States persons;

''(B) the nature of the information sought, including the identity of any foreign power against whom the acquisition will be directed;

''(C) minimization procedures that meet the definition of minimization procedures under section 101(h) to be used with respect to such acquisition; and

''(D)(i) the guidelines that will be used to ensure that an application is filed under section 104, if otherwise required by this Act, when a significant purpose of an acquisition is to acquire the communications of a specific United States person reasonably believed to be located in the United States; and

''(ii) the criteria for determining if such a significant purpose exists, which shall require consideration of whether—

''(I) the department or agency of the Federal Government conducting the acquisition has made an inquiry to another department or agency of the Federal Government to gather information on the specific United States person;

''(II) the department or agency of the Federal Government conducting the acquisition has provided information that identifies the specific United States person to another department or agency of the Federal Government;

''(III) the department or agency of the Federal Government conducting the acquisition determines that the specific United States person has been the subject of ongoing interest or repeated investigation by a department or agency of the Federal Government; and

''(IV) the specific United States person is a natural person.

''(c) SPECIFIC PLACE NOT REQUIRED.—An application under subsection (a) is not required to identify the specific facilities, places, premises, or property at which the acquisition of foreign intelligence information will be directed.

''(d) REVIEW OF APPLICATION; APPEALS.—

''(1) REVIEW OF APPLICATION.—Not later than 15 days after a judge receives an application under subsection (a), the judge shall review such application and shall approve the application if the judge finds that—

''(A) the proposed procedures referred to in subsection (b)(2)(A) are reasonably designed to determine whether the targets of the acquisition are located outside the United States and not United States persons;

''(B) the proposed minimization procedures referred to in subsection (b)(2)(C) meet the definition of minimization procedures under section 101(h); and

''(C)(i) the guidelines referred to in subsection (b)(2)(D) are reasonably designed to ensure that an application is filed under section 104, if otherwise required by this Act, when a significant purpose of an acquisition is to acquire the communications of a specific United States person reasonably believed to be located in the United States; and

''(ii) the criteria for determining if such a significant purpose exists require consideration of whether—

''(I) the department or agency of the Federal Government conducting the acquisition has made an inquiry to another department or agency of the Federal Government to gather information on the specific United States person;

''(II) the department or agency of the Federal Government conducting the acquisition has provided information that identifies the specific United States person to another department or agency of the Federal Government;

''(III) the department or agency of the Federal Government conducting the acquisition determines that the specific United States person has been the subject of ongoing interest or repeated investigation by a department or agency of the Federal Government; and

''(IV) the specific United States person is a natural person.

''(2) TEMPORARY ORDER; APPEALS.—

''(A) TEMPORARY ORDER.—A judge denying an application under paragraph (1) may, at the application of the United States, issue a temporary order to authorize an acquisition under section 105B in accordance with the application under subsection (a) during the pendency of any appeal of the denial of such application.

''(B) APPEALS.—The United States may appeal the denial of an application for an order under paragraph (1) or a temporary order under subparagraph (A) in accordance with section 103.

''(e) ORDER.—

''(1) IN GENERAL.—A judge approving an application under subsection (d) shall issue an order—

''(A) authorizing the acquisition of the contents of the communications as requested, or as modified by the judge;

''(B) requiring the communications service provider or custodian, or officer, employee, or agent of such service provider or custodian, who has authorized access to the information, facilities, or technical assistance necessary to accomplish the acquisition to provide such information, facilities, or technical assistance necessary to accomplish the acquisition and to produce a minimum of interference with the services that provider, custodian, officer, employee, or agent is providing the target of the acquisition;

''(C) requiring such communications service provider, custodian, officer, employee, or agent, upon the request of the applicant, to maintain under security procedures approved by the Attorney General and the Director of National Intelligence any records concerning the acquisition or the aid furnished;

''(D) directing the Federal Government to—

''(i) compensate, at the prevailing rate, a person for providing information, facilities, or assistance pursuant to such order;

''(ii) provide a copy of the portion of the order directing the person to comply with the order to such person; and

''(iii) provide a certification stating that the acquisition is authorized under this section and that all requirements of this section have been met; and

''(E) directing the applicant to follow—

''(i) the procedures referred to in subsection (b)(2)(A) as proposed or as modified by the judge;

''(ii) the minimization procedures referred to in subsection (b)(2)(C) as proposed or as modified by the judge; and

''(iii) the guidelines referred to in subsection (b)(2)(D) as proposed or as modified by the judge.

''(2) FAILURE TO COMPLY.—If a person fails to comply with an order issued under paragraph (1), the Attorney General may invoke the aid of the court established under section 103(a) to compel compliance with the order. Failure to obey an order of the court may be punished by the court as contempt of court. Any process under this section may be served in any judicial district in which the person may be found.

''(3) LIABILITY OF ORDER.—Notwithstanding any other law, no cause of action shall lie in any court against any person for providing any information, facilities, or assistance in accordance with an order issued under this subsection.

''(4) RETENTION OF ORDER.—The Director of National Intelligence and the court established under subsection 103(a) shall retain an order issued under this section for a period of not less than 10 years from the date on which such order is issued.

''(5) ASSESSMENT OF COMPLIANCE WITH COURT ORDER.—At or before the end of the period of time for which an acquisition is approved by an order or an extension under this section, the court established under section 103(a) shall, not less frequently than once each quarter, assess compliance with the procedures and guidelines referred to in paragraph (1)(E) and review the circumstances under which information concerning United States persons was acquired, retained, or disseminated.''.

SEC. 4. EMERGENCY AUTHORIZATION OF ACQUISITIONS OF COMMUNICATIONS OF NON-UNITED STATES PERSONS LOCATED OUTSIDE THE UNITED STATES WHO MAY BE COMMUNICATING WITH PERSONS INSIDE THE UNITED STATES.

Section 105C of the Foreign Intelligence Surveillance Act of 1978 (50 U.S.C. 1801 et seq.) is amended to read as follows:

''EMERGENCY AUTHORIZATION OF ACQUISITIONS OF COMMUNICATIONS OF NON-UNITED STATES PERSONS LOCATED OUTSIDE THE UNITED STATES WHO MAY BE COMMUNICATING WITH PERSONS INSIDE THE UNITED STATES

''SEC. 105C. (a) APPLICATION AFTER EMERGENCY AUTHORIZATION.—As soon as is practicable, but not more than 7 days after the Director of National Intelligence and the Attorney General authorize an acquisition under this section, an application for an order authorizing the acquisition in accordance with section 105B shall be submitted to the judge referred to in subsection (b)(2) of this section for approval of the acquisition in accordance with section 105B.

''(b) EMERGENCY AUTHORIZATION.—Notwithstanding any other provision of this Act, the Director of National Intelligence and the Attorney General may jointly authorize the emergency acquisition of foreign intelligence information (as defined in paragraph (1) or (2)(A) of section 101(e)) for a period of not more than 45 days if—

''(1) the Director of National Intelligence and the Attorney General jointly determine that—

''(A) an emergency situation exists with respect to an authorization for an acquisition under section 105B before an order approving the acquisition under such section can with due diligence be obtained;

''(B) the targets of the acquisition of foreign intelligence information under this section are persons reasonably believed to be located outside the United States;

''(C) the targets of the acquisition are reasonably believed to be persons that are not United States persons;

''(D) there are procedures in place that will be used by the Director of National Intelligence and the Attorney General during the duration of the authorization to determine if there is a reasonable belief that the persons that are the targets of the acquisition are located outside the United States and not United States persons;

''(E) the acquisition involves obtaining the foreign intelligence information from, or with the assistance of, a communications service provider or custodian, or an officer, employee, or agent of such service provider or custodian, who has authorized access to the communications to be acquired, either as they are transmitted or while they are stored, or equipment that is being or may be used to transmit or store such communications;

''(F) a significant purpose of the acquisition is to obtain foreign intelligence information (as defined in paragraph (1) or (2)(A) of section 101(e));

''(G) minimization procedures to be used with respect to such acquisition activity meet the definition of minimization procedures under section 101(h); and

''(H)(i) there are guidelines that will be used to ensure that an application is filed under secion 104, if otherwise required by this Act, when a significant purpose of an acquisition is to acquire the communications of a specific United States person reasonably believed to be located in the United States; and

''(ii) the criteria for determining if such a significant purpose exists require consideration of whether—

''(I) the department or agency of the Federal Government conducting the acquisition has made an inquiry to another department or agency of the Federal Government to gather information on the specific United States person;

''(II) the department or agency of the Federal Government conducting the acquisition has provided information that identifies the specific United States person to another department or agency of the Federal Government;

''(III) the department or agency of the Federal Government conducting the acquisition determines that the United States person has been the subject of ongoing interest or repeated investigation by a department or agency of the Federal Government; and

''(IV) the specific United States person is a natural person.

''(2) the Director of National Intelligence and the Attorney General, or their designees, inform a judge having jurisdiction to approve an acquisition under section 105B at the time of the authorization under this section that the decision has been made to acquire foreign intelligence information.

''(c) INFORMATION, FACILITIES, AND TECHNICAL ASSISTANCE.—

''(1) DIRECTIVE.—Pursuant to an authorization of an acquisition under this section, the Attorney General may direct a communications service provider, custodian, or an officer, employee, or agent of such service provider or custodian, who has the lawful authority to access the information, facilities, or technical assistance necessary to accomplish such acquisition to—

''(A) furnish the Attorney General forthwith with such information, facilities, or technical assistance in a manner that will protect the secrecy of the acquisition and produce a minimum of interference with the services that provider, custodian, officer, employee, or agent is providing the target of the acquisition; and

''(B) maintain under security procedures approved by the Attorney General and the Director of National Intelligence any records concerning the acquisition or the aid furnished.

''(2) PARAMETERS; CERTIFICATIONS.—The Attorney General shall provide to any person directed to provide assistance under paragraph (1) with—

''(A) a document setting forth the parameters of the directive;

''(B) a certification stating that—

''(i) the emergency authorization has been issued pursuant to this section;

''(ii) all requirements of this section have been met;

''(iii) a judge has been informed of the emergency authorization in accordance with subsection (b)(2); and

''(iv) an application will be submitted in accordance with subsection (a); and

''(C) a certification that the recipient of the directive shall be compensated, at the prevailing rate, for providing information, facilities, or assistance pursuant to such directive.''.

SEC. 5. OVERSIGHT OF ACQUISITIONS OF COMMUNICATIONS OF NON-UNITED STATES PERSONS LOCATED OUTSIDE OF THE UNITED STATES WHO MAY BE COMMUNICATING WITH PERSONS INSIDE THE UNITED STATES.

The Foreign Intelligence Surveillance Act of 1978 (50 U.S.C. 1801 et seq.) is amended by inserting after section 105C the following new section:

''OVERSIGHT OF ACQUISITIONS OF COMMUNICATIONS OF NON-UNITED STATES PERSONS LOCATED OUTSIDE OF THE UNITED STATES WHO MAY BE COMMUNICATING WITH PERSONS INSIDE THE UNITED STATES

''SEC. 105D. (a) APPLICATION; PROCEDURES; ORDERS.—Not later than 7 days after an application is submitted under section 105B(a) or an order is issued under section 105B(e), the Director of National Intelligence and the Attorney General shall submit to the appropriate committees of Congress—

''(1) in the case of an application—

''(A) a copy of the application, including the certification made under section 105B(b)(1); and

''(B) a description of the primary purpose of the acquisition for which the application is submitted; and

''(2) in the case of an order, a copy of the order, including the procedures and guidelines referred to in section 105B(e)(1)(E).

''(b) REGULAR AUDITS.—

''(1) AUDIT.—Not later than 120 days after the date of the enactment of this section, and every 120 days thereafter until the expiration of all orders issued under section 105B, the Inspector General of the Department of Justice shall complete an audit on the implementation of and compliance with the procedures and guidelines referred to in section 105B(e)(1)(E) and shall submit to the appropriate committees of Congress, the Attorney General, the Director of National Intelligence, and the court established under section 103(a) the results of such audit, including, for each order authorizing the acquisition of foreign intelligence under section 105B—

''(A) the number of targets of an acquisition under such order that were later determined to be located in the United States;

''(B) the number of persons located in the United States whose communications have been acquired under such order;

''(C) the number and nature of reports disseminated containing information on a United States person that was collected under such order; and

''(D) the number of applications submitted for approval of electronic surveillance under section 104 for targets whose communications were acquired under such order.

''(2) REPORT.—Not later than 30 days after the completion of an audit under paragraph (1), the Attorney General shall submit to the appropriate committees of Congress and the court established under section 103(a) a report containing the results of such audit.

''(c) COMPLIANCE REPORTS.—Not later than 60 days after the date of the enactment of this section, and every 120 days thereafter until the expiration of all orders issued under section 105B, the Director of National Intelligence and the Attorney General shall submit to the appropriate committees of Congress and the court established under section 103(a) a report concerning acquisitions under section 105B during the previous 120-day period. Each report submitted under this section shall include a description of any incidents of non-compliance with an order issued under section 105B(e), including incidents of non-compliance by—

''(1) an element of the intelligence community with procedures referred to in section 105B(e)(1)(E)(i);

''(2) an element of the intelligence community with procedures referred to in section 105B(e)(1)(E)(ii);

''(3) an element of the intelligence community with guidelines referred to in section 105B(e)(1)(E)(iii); and

''(4) a person directed to provide information, facilities, or technical assistance under such order.

''(d) REPORT ON EMERGENCY AUTHORITY.—The Director of National Intelligence and the Attorney General shall annually submit to the appropriate committees of Congress a report containing the number of emergency authorizations of acquisitions under section 105C and a description of any incidents of non-compliance with an emergency authorization under such section.

''(e) APPROPRIATE COMMITTEES OF CONGRESS DEFINED.—In this section, the term 'appropriate committees of Congress' means—

''(1) the Permanent Select Committee on Intelligence of the House of Representatives;

''(2) the Select Committee on Intelligence of the Senate; and

''(3) the Committees on the Judiciary of the House of Representatives and the Senate.''.

SEC. 6. DISSEMINATION OF COMMUNICATIONS OF NON-UNITED STATES PERSONS LOCATED OUTSIDE OF THE UNITED STATES WHO MAY BE COMMUNICATING WITH PERSONS INSIDE THE UNITED STATES.

The Foreign Intelligence Surveillance Act of 1978 (50 U.S.C. 1801 et seq.) is amended by inserting after section 105D (as added by section 5) the following new section:

''DISSEMINATION OF COMMUNICATIONS OF NON-UNITED STATES PERSONS LOCATED OUTSIDE OF THE UNITED STATES WHO MAY BE COMMUNICATING WITH PERSONS INSIDE THE UNITED STATES

''SEC. 105E. The contents of communications collected under section 105B or section 105C, and intelligence reports based on such contents, shall not be disclosed or disseminated with information that identifies a United States person unless an officer or employee of the Federal Government whose rate of basic pay is not less than the minimum rate payable under section 5382 of title 5, United States Code (relating to rates of pay for the Senior Executive Service) determines that the identity of the United States person is necessary to—

''(1) understand the foreign intelligence collected under section 105B or 105C or assess the importance of such intelligence; and

''(2) protect the national security of the United States, the citizens, employees, or officers of the United States, or the members of the United States Armed Forces.''.

SEC. 7. FOREIGN INTELLIGENCE SURVEILLANCE COURT EN BANC.

Section 103 of the Foreign Intelligence Surveillance Act of 1978 (50 U.S.C. 1803) is amended by adding at the end the following new subsection:

''(g) In any case where the court established under subsection (a) or a judge of such court is required to review a matter under this Act, the court may, at the discretion of the court, sit en banc to review such matter and issue any orders related to such matter.''.

SEC. 8. FOREIGN INTELLIGENCE SURVEILLANCE COURT MATTERS.

(a) AUTHORITY FOR ADDITIONAL JUDGES.—Section 103(a) of the Foreign Intelligence Surveillance Act of 1978 (50 U.S.C. 1803(a)) is amended—

(1) by inserting ''(1)'' after ''(a)'';

(2) in paragraph (1) (as so designated)—

(A) by striking ''11'' and inserting ''15''; and

(B) by inserting ''at least'' before ''seven of the United States judicial circuits''; and

(3) by designating the second sentence as paragraph (3) and indenting such paragraph, as so designated two ems from the left margin.

(b) CONSIDERATION OF EMERGENCY APPLICATIONS.—Such section is further amended by inserting after paragraph (1) (as designated by subsection (a)(1)) the following new paragraph:

''(2) A judge of the court shall make a determination to approve, deny, or modify an application submitted pursuant to section 105(f), section 304(e), or section 403 not later than 24 hours after the receipt of such application by the court.''.

SEC. 9. REITERATION OF FISA AS THE EXCLUSIVE MEANS BY WHICH ELECTRONIC SURVEILLANCE MAY BE CONDUCTED FOR GATHERING FOREIGN INTELLIGENCE INFORMATION.

(a) EXCLUSIVE MEANS.—Notwithstanding any other provision of law, the Foreign Intelligence Surveillance Act of 1978 (50 U.S.C. 1801 et seq.) shall be the exclusive means by which electronic surveillance may be conducted for the purpose of gathering foreign intelligence information.

(b) SPECIFIC AUTHORIZATION REQUIRED FOR EXCEPTION.—Subsection (a) shall apply until specific statutory authorization for electronic surveillance, other than as an amendment to the Foreign Intelligence Surveillance Act of 1978 (50 U.S.C. 1801 et seq.), is enacted. Such specific statutory authorization shall be the only exception to subsection (a).

SEC. 10. ENHANCEMENT OF ELECTRONIC SURVEILLANCE AUTHORITY IN WARTIME AND OTHER COLLECTION.

Sections 111, 309, and 404 of the Foreign Intelligence Surveillance Act of 1978 (50 U.S.C. 1811, 1829, and 1844) are amended by striking ''Congress'' and inserting ''Congress or an authorization for the use of military force described in section 2(c)(2) of the War Powers Resolution (50 U.S.C. 1541(c)(2)) if such authorization contains a specific authorization for foreign intelligence collection under this section, or if the Congress is unable to convene because of an attack upon the United States.''.

SEC. 11. AUDIT OF WARRANTLESS SURVEILLANCE PROGRAMS.

(a) AUDIT.—Not later than 180 days after the date of the enactment of this Act, the Inspector General of the Department of Justice shall complete an audit of all programs of the Federal Government involving the acquisition of communications conducted without a court order on or after September 11, 2001, including the Terrorist Surveillance Program referred to by the President in a radio address on December 17, 2005. Such audit shall include acquiring all documents relevant to such programs, including memoranda concerning the legal authority of a program, authorizations of a program, certifications to telecommunications carriers, and court orders.

(b) REPORT.—

(1) IN GENERAL.—Not later than 30 days after the completion of the audit under subsection (a), the Inspector General shall submit to the Permanent Select Committee on Intelligence and the Committee on the Judiciary of the House of Representatives and the Select Committee on Intelligence and the Committee on the Judiciary of the Senate a report containing the results of such audit, including all documents acquired pursuant to conducting such audit.

(2) FORM.—The report under paragraph (1) shall be submitted in unclassified form, but may include a classified annex.

(c) EXPEDITED SECURITY CLEARANCE.—The Director of National Intelligence shall ensure that the process for the investigation and adjudication of an application by the Inspector General or the appropriate staff of the Office of the Inspector General of the Department of Justice for a security clearance necessary for the conduct of the audit under subsection (a) is conducted as expeditiously as possible.

SEC. 12. RECORD-KEEPING SYSTEM ON ACQUISITION OF COMMUNICATIONS OF UNITED STATES PERSONS.

(a) RECORD-KEEPING SYSTEM.—The Director of National Intelligence and the Attorney General shall jointly develop and maintain a record-keeping system that will keep track of—

(1) the instances where the identity of a United States person whose communications were acquired was disclosed by an element of the intelligence community (as defined in section 3(4) of the National Security Act of 1947 (50 U.S.C. 401a(4)) that collected the communications to other departments or agencies of the United States; and

(2) the departments and agencies of the Federal Government and persons to whom such identity information was disclosed.

(b) REPORT.—The Director of National Intelligence and the Attorney General shall annually submit to the Permanent Select Committee on Intelligence and the Committee on the Judiciary of the House of Representatives and the Select Committee on Intelligence and the Committee on the Judiciary of the Senate a report on the record-keeping system created under subsection (a), including the number of instances referred to in paragraph (1).

SEC. 13. AUTHORIZATION FOR INCREASED RESOURCES RELATING TO FOREIGN INTELLIGENCE SURVEILLANCE.

(a) IN GENERAL.—There are authorized to be appropriated to the Department of Justice, for the activities of the Office of the Inspector General and the appropriate elements of the National Security Division, and to the National Security Agency such sums as may be necessary to meet the personnel and information technology demands to ensure the timely and efficient processing of—

(1) applications and other submissions to the court established under section 103(a) of the Foreign Intelligence Surveillance Act of 1978 (50 U.S.C. 1803(a));

(2) the audit and reporting requirements under—

(A) section 105D of such Act; and

(B) section 10; and

(3) the record-keeping system and reporting requirements under section 8.

(b) ADDITIONAL PERSONNEL FOR PREPARATION AND CONSIDERATION OF APPLICATIONS FOR ORDERS APPROVING ELECTRONIC SURVEILLANCE AND PHYSICAL SEARCH.—

(1) NATIONAL SECURITY DIVISION OF THE DEPARTMENT OF JUSTICE.—

(A) ADDITIONAL PERSONNEL.—The National Security Division of the Department of Justice is hereby authorized such additional personnel as may be necessary to carry out the prompt and timely preparation, modification, and review of applications under Foreign Intelligence Surveillance Act of 1978 for orders under that Act for foreign intelligence purposes.

(B) ASSIGNMENT.—The Attorney General shall assign personnel authorized by paragraph (1) to and among appropriate offices of the intelligence community (as defined in section 3(4) of the National Security Act of 1947 (50 U.S.C. 401a(4))) in order that such personnel may directly assist personnel of the Intelligence Community in preparing applications described in that paragraph and conduct prompt and effective oversight of the activities of such agencies under Foreign Intelligence Surveillance Court orders.

(2) DIRECTOR OF NATIONAL INTELLIGENCE.—

(A) ADDITIONAL LEGAL AND OTHER PERSONNEL.—The Director of National Intelligence is hereby authorized such additional legal and other personnel as may be necessary to carry out the prompt and timely preparation of applications under the Foreign Intelligence Surveillance Act of 1978 for orders under that Act approving electronic surveillance for foreign intelligence purposes.

(B) ASSIGNMENT.—The Director of National Intelligence shall assign personnel authorized by paragraph (1) to and among the intelligence community (as defined in section 3(4) of the National Security Act of 1947 (50 U.S.C. 401a(4))), including the field offices of the Federal Bureau of Investigation, in order that such personnel may directly assist personnel of the intelligence community in preparing applications described in that paragraph.

(3) ADDITIONAL LEGAL AND OTHER PERSONNEL FOR FOREIGN INTELLIGENCE SURVEILLANCE COURT.—There is hereby authorized for the court established under section 103(a) of the Foreign Intelligence Surveillance Act of 1978 (50 U.S.C. 1803(a)) such additional staff personnel as may be necessary to facilitate the prompt and timely consideration by that court of applications under such Act for orders under such Act approving electronic surveillance for foreign intelligence purposes. Personnel authorized by this paragraph shall perform such duties relating to the consideration of such applications as that court shall direct.

(4) SUPPLEMENT NOT SUPPLANT.—The personnel authorized by this section are in addition to any other personnel authorized by law.

SEC. 14. DOCUMENT MANAGEMENT SYSTEM FOR APPLICATIONS FOR ORDERS APPROVING ELECTRONIC SURVEILLANCE.

(a) SYSTEM REQUIRED.—The Attorney General shall, in consultation with the Director of National Intelligence and the Foreign Intelligence Surveillance Court, develop and implement a secure, classified document management system that permits the prompt preparation, modification, and review by appropriate personnel of the Department of Justice, the Federal Bureau of Investigation, the National Security Agency, and other applicable elements of the United States Government of applications under the Foreign Intelligence Surveillance Act of 1978 (50 U.S.C. 1804) before their submission to the Foreign Intelligence Surveillance Court.

(b) SCOPE OF SYSTEM.—The document management system required by subsection (a) shall—

(1) permit and facilitate the prompt submittal of applications to the Foreign Intelligence Surveillance Court under the Foreign Intelligence Surveillance Act of 1978; and

(2) permit and facilitate the prompt transmittal of rulings of the Foreign Intelligence Surveillance Court to personnel submitting applications described in paragraph (1), and provide for the secure electronic storage and retrieval of all such applications and related matters with the court and for their secure transmission to the National Archives and Records Administration.

SEC. 15. TRAINING OF INTELLIGENCE COMMUNITY PERSONNEL IN FOREIGN INTELLIGENCE COLLECTION MATTERS.

The Director of National Intelligence shall, in consultation with the Attorney General—

(1) develop regulations to establish procedures for conducting and seeking approval of electronic surveillance, physical search, and the installation and use of pen registers and trap and trace devices on an emergency basis, and for preparing and properly submitting and receiving applications and orders under the Foreign Intelligence Surveillance Act of 1978; and

(2) prescribe related training on the Foreign Intelligence Surveillance Act of 1978 and related legal matters for the personnel of the applicable agencies of the intelligence community (as defined in section 3(4) of the National Security Act of 1947 (50 U.S.C. 401a(4))).

SEC. 16. INFORMATION FOR CONGRESS ON THE TERRORIST SURVEILLANCE PROGRAM AND SIMILAR PROGRAMS.

As soon as practicable after the date of the enactment of this Act, but not later than seven days after such date, the President shall fully inform each member of the Permanent Select Committee on Intelligence of the House of Representatives and the Select Committee on Intelligence of the Senate on the following:

(1) The Terrorist Surveillance Program of the National Security Agency.

(2) Any program in existence from September 11, 2001, until the effective date of this Act that involves, whether in part or in whole, the electronic surveillance of United States persons in the United States for foreign intelligence or other purposes, and which is conducted by any department, agency, or other element of the United States Government, or by any entity at the direction of a department, agency, or other element of the United States Government, without fully complying with the procedures set forth in the Foreign Intelligence Surveillance Act of 1978 (50 U.S.C. 1801 et seq.) or chapter 119, 121, or 206 of title 18, United States Code.

SEC. 17. TECHNICAL AND CONFORMING AMENDMENTS.

(a) TABLE OF CONTENTS.—The table of contents in the first section of the Foreign Intelligence Surveillance Act of 1978 (50 U.S.C. 1801 et seq.) is amended by striking the items relating to sections 105A, 105B, and 105C and inserting the following new items:

''Sec. 105A. Clarification of electronic surveillance of non-United States persons outside the United States.

''Sec. 105B. Additional authorization of acquisitions of communications of non-United States persons located outside the United States who may be communicating with persons inside the United States.

''Sec. 105C. Emergency authorization of acquisitions of communications of non-United States persons located outside the United States who may be communicating with persons inside the United States.

''Sec. 105D. Oversight of acquisitions of communications of non-United States persons located outside of the United States who may be communicating with persons inside the United States.''.

(b) SECTION 103(e) OF FISA.—Section 103(e) of the Foreign Intelligence Surveillance Act of 1978 (50 U.S.C. 1803(e)) is amended—

(1) in paragraph (1), by striking ''105B(h) or''; and

(2) in paragraph (2), by striking ''105B(h) or''.

(c) REPEAL OF CERTAIN PROVISIONS OF THE PROTECT AMERICA ACT OF 2007.—Sections 4 and 6 of the Protect America Act (Public Law 110-55) are hereby repealed.

SEC. 18. SUNSET; TRANSITION PROCEDURES.

(a) SUNSET OF NEW PROVISIONS.—

(1) IN GENERAL.—Except as provided in paragraph (2), effective on December 31, 2009—

(A) sections 105A, 105B, 105C, and 105D of the Foreign Intelligence Surveillance Act of 1978 (50 U.S.C. 1801 et seq.) are hereby repealed; and

(B) the table of contents in the first section of such Act is amended by striking the items relating to sections 105A, 105B, 105C, and 105D.

(2) ACQUISITIONS AUTHORIZED PRIOR TO SUNSET.—Any authorization or order issued under section 105B of the Foreign Intelligence Surveillance Act of 1978, as amended by this Act, in effect on December 31, 2009, shall continue in effect until the date of the expiration of such authorization or order.

(b) ACQUISITIONS AUTHORIZED PRIOR TO ENACTMENT.—

(1) EFFECT.—Notwithstanding the amendments made by this Act, an authorization of the acquisition of foreign intelligence information under section 105B of the Foreign Intelligence Surveillance Act of 1978 (50 U.S.C. 1801 et seq.) made before the date of the enactment of this Act shall remain in effect until the date of the expiration of such authorization or the date that is 180 days after such date of enactment, whichever is earlier.

(2) REPORT.—Not later than 30 days after the date of the expiration of all authorizations of acquisition of foreign intelligence information under section 105B of the Foreign Intelligence Surveillance Act of 1978 (as added by Public Law 110–55) made before the date of the enactment of this Act in accordance with paragraph (1), the Director of National Intelligence and the Attorney General shall submit to the Permanent Select Committee on Intelligence and the Committee on the Judiciary of the House of Representatives and the Select Committee on Intelligence and the Committee on the Judiciary of the Senate a report on such authorizations, including—

(A) the number of targets of an acquisition under section 105B of such Act (as in effect on the day before the date of the enactment of this Act) that were later determined to be located in the United States;

(B) the number of persons located in the United States whose communications have been acquired under such section;

(C) the number of reports disseminated containing information on a United States person that was collected under such section;

(D) the number of applications submitted for approval of electronic surveillance under section 104 of such Act based upon information collected pursuant to an acquisition authorized under section 105B of such Act (as in effect on the day before the date of the enactment of this Act); and

(E) a description of any incidents of noncompliance with an authorization under such section, including incidents of non-compliance by—

(i) an element of the intelligence community with procedures referred to in subsection (a)(1) of such section;

(ii) an element of the intelligence community with minimization procedures referred to in subsection (a)(5) of such section; and

(iii) a person directed to provide information, facilities, or technical assistance under subsection (e) of such section.

(3) INTELLIGENCE COMMUNITY DEFINED.—In this subsection, the term ''intelligence community'' has the meaning given the term in section 3(4) of the National Security Act of 1947 (50 U.S.C. 401a(4)).

SEC. 19. CERTIFICATION TO COMMUNICATIONS SERVICE PROVIDERS THAT ACQUISITIONS ARE AUTHORIZED UNDER FISA.

(a) AUTHORIZATION UNDER SECTION 102.—Section 102(a) of the Foreign Intelligence Surveillance Act of 1978 (50 U.S.C. 1802(a)) is amended by striking ''furnishing such aid'' and inserting ''furnishing such aid and shall provide such carrier with a certification stating that the electronic surveillance is authorized under this section and that all requirements of this section have been met''.

(b) AUTHORIZATION UNDER SECTION 105.—Section 105(c)(2) of such Act (50 U.S.C. 1805(c)(2)) is amended—

(1) in subparagraph (C), by striking ''; and'' and inserting '';'';

(2) in subparagraph (D), by striking ''aid.'' and inserting ''aid; and''; and

(3) by adding at the end the following new subparagraph:

''(E) that the applicant provide such carrier, landlord, custodian, or other person with a certification stating that the electronic surveillance is authorized under this section and that all requirements of this section have been met.''.

SEC. 20. STATUTE OF LIMITATIONS.

(a) IN GENERAL.—Section 109 of the Foreign Intelligence Surveillance Act of 1978 (50 U.S.C. 1809) is amended by adding at the end the following new subsection:

(e) STATUTE OF LIMITATIONS.—No person shall be prosecuted, tried, or punished for any offense under this section unless the indictment is found or the information is instituted not later than 10 years after the commission of the offense.''.

(b) APPLICATION.—The amendment made by subsection (a) shall apply to any offense committed before the date of the enactment of this Act if the statute of limitations applicable to that offense has not run as of such date.

SEC. 21. NO RIGHTS UNDER THE RESTORE ACT FOR UNDOCUMENTED ALIENS.

This Act and the amendments made by this Act shall not be construed to prohibit surveillance of, or grant any rights to, an alien not permitted to be in or remain in the United States.

SEC. 22. SURVEILLANCE TO PROTECT THE UNITED STATES.

This Act and the amendments made by this Act shall not be construed to prohibit the intelligence community (as defined in section 3(4) of the National Security Act of 1947 (50 U.S.C. 401a(4))) from conducting lawful surveillance that is necessary to—

(1) prevent Osama Bin Laden, al Qaeda, or any other terrorist or terrorist organization from attacking the United States, any United States person, or any ally of the United States;

(2) ensure the safety and security of members of the United States Armed Forces or any other officer or employee of the Federal Government involved in protecting the national security of the United States; or

(3) protect the United States, any United States person, or any ally of the United States from threats posed by weapons of mass destruction or other threats to national security.

The SPEAKER pro tempore. Time for debate pursuant to House Resolution 746 is considered expired.

Pursuant to House Resolution 824, debate shall not exceed 1 hour, with 30 minutes equally divided and controlled by the chairman and ranking minority member of the Committee on the Judiciary and 30 minutes equally divided and controlled by the chairman and ranking minority member of the Permanent Select Committee on Intelligence.

The gentleman from Michigan (Mr. CONYERS) and the gentleman from Texas (Mr. SMITH) each will control 15 minutes and the gentleman from Texas (Mr. REYES) and the gentleman from Michigan (Mr. HOEKSTRA) each will control 15 minutes.

The Chair recognizes the gentleman from Michigan (Mr. CONYERS).

GENERAL LEAVE

Mr. CONYERS. Mr. Speaker, I ask unanimous consent that all Members may have 5 legislative days in which to revise and extend their remarks and include extraneous material on H.R. 3773.

The SPEAKER pro tempore. Is there objection to the request of the gentleman from Michigan?

There was no objection.

Mr. CONYERS. Mr. Speaker, I yield myself as much time as I may consume.

Members of the House, the RESTORE Act dealing with FISA addresses the needs of the intelligence community for flexibility in dealing with modern communications networks.

□ 1815

It received the most careful scrutiny and consideration by this Committee on the Judiciary, as well as by the Intelligence Committee, chaired by Chairman REYES, to ensure that it meets every concern our intelligence agencies have raised, every single one of them, and does so consistent with the rules of law, our Constitution, and our values.

Let's begin this discussion this evening by clearing up a few things that the bill will not do. The RESTORE Act will never require our intelligence agencies to stop listening to the bad guys. Never. Special emergency provisions allow us to listen first and get the warrant after the fact, if it's needed. No one will ever have to stop listening to a terrorist plotting an attack. I hope I don't hear that raised on the floor this evening.

The RESTORE Act will not make our intelligence agencies have to get thousands of warrants for terrorists outside the country. It will not do that. Instead, a basket authorization will permit surveillance of an entire foreign terrorist organization. This is the most effective way to target Osama bin Laden, al Qaeda, and other threats to our country and our citizens.

The RESTORE Act does not give the government free rein to listen to Americans. As has always been the case under FISA, this bill requires that the government get a warrant to target an American; any American. We have also a manager's amendment, which continues to promote the goals of intelligence flexibility with appropriate oversight, while safeguarding our security and our liberty. It makes clear that the protections of the act will not inhibit gathering intelligence against present dangers, such as Osama bin Laden, or threats to our troops in the field.

It does provide guidelines to make it easier to determine when the significant purpose of the surveillance act is to acquire information on a United States person and a FISA warrant is needed. It provides important safeguards on dissemination of information about individual Americans when it's acquired under the RESTORE Act's more flexible structure. Specifically, an SES-level manager will review such dissemination on a particularized basis.

Importantly, the RESTORE Act has no retroactive immunity for telecommunications carriers who may have assisted the government in conducting unlawful surveillance on Americans. I am sorry to report to you that the other body has a measure that does give that retroactive immunity. The RESTORE Act now on the floor has no retroactive immunity for telecommunications carriers who may have assisted the government in unlawful surveillance on Americans.

Until we receive the information, the data, the letters that we have requested to know what they have done, information we have been waiting for more than 10 months for, we can't even begin to responsibly consider such a request. So as of now, it's out. No retroactive immunity.

The legislation that we have before us now is a much-needed start to restoring our system of checks and balances, preserving our liberty, and ensuring that our government has the tools they legitimately need to combat terrorism. We got pressed up against the wall in August. It's not going to happen again. There's a 6-month run on the present measure before us. Before we get pushed up against the holidays, we are saying, Let's do it now.

We have had a tremendous working relationship with the chairman of the Intelligence Committee, SILVESTRE REYES, and his staff and my staff. Majority and minority have been working

closely together to bring to you a commonsense and balanced piece of legislation that does what we set out to do, and that is to preserve our liberties and make sure we have effective security. We want our intelligence agencies strong, but we want to bring the FISA Court back into the picture, and we do in the measure before us.

Six years ago, the administration unilaterally chose to engage in warrantless surveillance of American citizens without court review. That decision has—to be charitable—created a legal and political quagmire. Officials resigned, the program was riddled with errors, it was shut down for several weeks, officials rushed to the hospital to ask a sick man to reauthorize it over his deputy's objections, and vital prosecutorial resources were diverted. Most importantly, our own citizens questioned wheher their own government was operating within the confines of the law.

Two months ago, when that scheme appeared to be breaking down, the administration forced Congress to accept an equally flawed statute. This new law gutted the power of the FISA court. It granted the administration broad new powers to engage in warrantless searches within the U.S., including physical searches of our homes, computers, offices and medical records. The law contained no meaningful oversight whatsoever.

The legislation before us today seeks to once again strike the appropriate balance between needed government authority and our precious rights and liberties. It tells the government they need no warrant when foreign agents communicate with other foreigners. It reiterates that warrants are needed when Americans are being targeted. The bill also allows the interception of communications of foreign targets who may communicate with U.S. persons. However, it insists that procedures be in place—approved by the FISA court—to insure that no American is being targeted, and that his or her privacy is protected.

The bill also provides for several critical safeguards. We include periodic audits by the Inspector General, we narrow the scope of the authority to protect against threats to our national security, and we protect the privacy of Americans traveling abroad. We also sunset the legislation in December 2009.

The RESTORE Act, which has received careful consideration by the Judiciary Committee and by the Intelligence Committee, addresses the needs of the intelligence community for flexibility and the ability to deal with modern communications networks.

It meets every concern that our intelligence agencies have raised and does so consistent with the rule of law, our Constitution, and our values.

Let me be clear on a few things this bill will NOT do:

The RESTORE Act will never require our intelligence agencies to stop listening to the bad guys. Never. There are emergency provisions and the ability to get a warrant after the fact. No one will ever have to stop listening to a terrorist plotting an attack.

It will not make our intelligence agencies get thousands of warrants for terrorists outside of the country. Instead, they can get a basket authorization to surveil the entire foreign terrorist organization. This is the most effective way to target Osama bin Laden, al Qaeda, and other threats.

The RESTORE Act does not give the government free rein to listen in to Americans. As has always been the case under FISA, this bill requires the government to get a warrant if it wants to target an American.

The Managers' Amendment also reflects the RESTORE Act's goals of intelligence flexibility and oversight, while ensuring both safety and civil liberties. It makes it clear that the protections of the Act will not inhibit gathering intelligence against present dangers, such as Osama bin Laden or threats to our troops in the field. It provides guidelines to flesh out what should be considered when determining whether a significant purpose of collection is to acquire information about a U.S. person, such that a FISA warrant would be required.

The Manager's Amendment also provides important safeguards on dissemination of information about individual Americans when it is acquired under the RESTORE Act's more flexible structure. Dissemination of U.S. person communications acquired under the RESTORE Act's basket authorities can only happen when an SES-level supervisor determines that the identity of that person is needed to understand or assess the importance of the foreign intelligence, and to protect the national security of the United States. This is not a blanket authorization to unmask everyone intercepted, but must be done on a person-by-person basis.

Importantly, the bill has no retroactive immunity for telecommunications carriers. Until we receive the underlying documents relating to their conduct from the administration—and we have been waiting for more than ten months—we cannot even begin to consider this request. Sending a small set of the documents to a subcommittee of the other body does not begin to meet this test.

There is one of the grave concerns about the Protect America Act that bears mention as we consider the RESTORE Act. The Protect America Act was overbroad in the types of entities from which the government could compel information, reaching into business or medical records or libraries. We have narrowed the scope of the acquisitions in the RESTORE Act to ensure that the government can only seek information under the ''basket authorizations'' from telecommunications service providers and related companies.

I share the concern of our library community that believes their mission and the chance to bring knowledge and freedom of expression abroad will be diminished if the U.S. government can indiscriminately monitor American libraries when they serve foreign users. This is not a hypothetical concern in an age of distance learning. While a library certainly is not the same kind of ''communications service provider'' as AOL or AT&T, it may allow patrons to access the internet, to send emails, and to conduct research on-line, so it literally ''provides'' these communications services to patrons. The Judiciary Committee report indicates that these now-standard library services do not make them ''telecommunications service providers'' for a 105B or 105C acquisition, but let me be clear—nothing in the bill is intended to leave libraries outside of the protections of the Foreign Intelligence Surveillance Act.

The legislation before us today is a much needed start to restoring our system of checks and balances, to preserving our precious liberties, and to insuring that our government has all the tools they legitimately need to combat terrorism. I urge my colleagues on both sides of the aisle to support this common sense and balanced legislation.

Mr. Speaker, I reserve the balance of my time.

Mr. SMITH of Texas. Mr. Speaker, I yield myself such time as I may consume.

Mr. Speaker, there is a time and place for politics and partisanship. But there are in fact important issues that transcend politics. The security of our Nation outweighs politics, especially when our country is at war.

One of the finest moments of bipartisanship in Washington came after one of the darkest days in our history. On the evening of September 11, 2001, Members of Congress stood shoulder to shoulder on the steps of the Capitol as a symbol of strength and unity in response to the terrorist attacks. In that moment, we stood together, not as Republicans or Democrats, but as Americans resolved to protect our Nation. However, as we stand here today, that same spirit of bipartisanship we shared on 9/11 no longer exists.

We began in August to address a very specific and very urgent issue facing our intelligence community. We learned from the Director of National Intelligence, Admiral McConnell, that the Foreign Intelligence Surveillance Act, or FISA, was outdated for today's technology. But the bill we are considering today does not modernize FISA; it weakens it. Why, after 30 years of lawful foreign intelligence collection, does the Democratic majority suddenly object to a law that their party originally enacted in 1978? Why make it harder to gather intelligence on terrorists after 9/11 than before?

Now, after only a few hours' notice, we are considering the RESTORE Act, which actually restores little. Rather, it undermines our national security and increases the risk of a future terrorist attack on our country. It prevents our intelligence community from gathering critical intelligence information. It ignores the need for legal protection for communications companies that assist law enforcement and intelligence officials. We are at war with terrorists who spend every day plotting attacks against us. Our intelligence community needs to detect and disrupt these plots. To deny this ability could have catastrophic consequences.

Admiral McConnell testified in great detail before the Judiciary Committee about the specific needs of the intelligence community and the need to reform FISA. Admiral McConnell's recommendations are ignored, unfortunately, in the RESTORE Act. Instead, it requires the intelligence community to obtain FISA court orders for all communications of persons reasonably believed to be outside the United States. FISA has never applied to persons outside of the United States.

Under the RESTORE Act, FISA court orders will be required for the first time ever for thousands of overseas terrorist targets. Also, section 18 of the

manager's amendment is bluntly titled: ''No Rights Under the RESTORE Act for Undocumented Aliens.'' That is what it says. But the practical effect of the RESTORE Act will be to allow unregulated, warrantless wiretapping of illegal immigrants in the United States. Is this really what the Democratic majority intends?

Finally, the RESTORE Act omits any liability protection for telephone companies and other carriers that assisted the government after September 11, 2001. These companies deserve our thanks, not a flurry of harassing lawsuits. Communications technology has changed since 1978. We can no longer gather foreign intelligence without the assistance of private communications companies. Extending commonsense liability protection to communication providers who acted in good faith to protect the United States from another terrorist attack is completely appropriate. If we fail to provide this protection, we risk losing the future cooperation of communication providers in gathering foreign intelligence.

Democrats made a promise to the American people in 2006 that Members of Congress would put aside politics and work together to find bipartisan solutions to issues facing the American people. That promise has apparently been broken.

Mr. Speaker, I reserve the balance of my time.

Mr. REYES. Mr. Speaker, I yield myself such time as I may consume.

Mr. Speaker, I rise once again in support of H.R. 3773, the RESTORE Act. I would also like the RECORD to reflect that Congressman BARON HILL intended to be listed as a cosponsor of H.R. 3773, and we are certainly grateful for his support.

In early September, at the direction of Speaker PELOSI, the Intelligence Committee and the House Judiciary Committee took up the call to improve the Protect America Act, or PAA. Passed in August, the PAA modified FISA and gave sweeping and unprecedented surveillance powers to the executive branch, while requiring minimal oversight and without providing a meaningful judicial check on the President's use of the new powers.

While we were charged with undoing the excesses of PAA, we also have the mandate to provide our intelligence professionals the legal authorities required to protect the country from our enemies. Six years after the tragic attacks of 9/11, Osama bin Laden remains at large and America continues to face threats from al Qaeda and other terrorist organizations. The war in Iraq continues to act as a recruitment tool for all our enemies.

Mindful of these threats, we drafted the RESTORE Act as a bill that we can all support and be proud of. The RESTORE Act arms our intelligence community with powerful new authorities to conduct electronic surveillance of targets outside the United States while maintaining our fundamental liberties. First, it exempts truly foreign-to-foreign communications from any judicial review, even when the communication passes through the United States or the surveillance device is still actually located in the United States. Second, it authorizes the acquisition of foreign intelligence information for all matters of national defense, including information relating to terrorism, espionage, sabotage, and other threats to the national security of our country.

Third, the act clarifies that nothing in the act or the amendments to the act shall be construed to prohibit lawful surveillance necessary to prevent Osama bin Laden, al Qaeda, or any other terrorist organization from attacking the United States or our allies. But these powerful authorities are subject to the checks and the balances required by our Constitution.

The RESTORE Act puts the FISA Court back in business where the rights of Americans are at stake. The RESTORE Act tightens overbroad language in the PAA that authorized physical searches of Americans' homes and offices without a warrant. The RESTORE Act restores meaningful, robust, and continuous oversight by the judicial and legislative branches to ensure that the powerful intelligence-gathering tools authorized by the RESTORE Act are being used effectively and within the boundaries set by our Constitution.

In sum, the RESTORE Act provides tools to keep the Nation safe and upholds our constitutional liberties. This debate has gone on long enough, I believe, Mr. Speaker. It has been unnecessarily prolonged bipartisan maneuvering from some in this House. I am sure that we will see more of that partisan gamesmanship tonight. But I urge my colleagues to reject partisan politics in favor of sound policy and support this critically important bill.

I urge all my colleagues to vote ''yes'' for the RESTORE Act.

With that, I reserve the balance of my time.

□ 1830

Mr. SMITH of Texas. Mr. Speaker, I yield 2 minutes to the gentleman from Virginia (Mr. FORBES), the ranking member of the Crime Subcommittee of the Judiciary Committee.

Mr. FORBES. Mr. Speaker, unfortunately some things never change, and unfortunately this bill happens to be one of them. No matter how dangerous law enforcement says this bill is, it hasn't changed. No matter how dangerous the intelligence community says it is, this bill hasn't changed. And unfortunately there is a cycle that won't change either, and that cycle is simply this.

In the nineties, we cut our intelligence capabilities. On 9/11/2001, we had the worst terrorist attack that has ever hit our shores. Since that time our intelligence community and our law enforcement people have worked hard and they have kept us safe. But if we have another hit, and this bill puts us on the same cycle, because what are we doing now? We are cutting our intelligence capabilities once again, like we did in the nineties. If we have another terrorist attack, the cycle will repeat itself, and they will bring back in law enforcement and they will point their fingers and they will say, why didn't you stop it?

Mr. Speaker, we have an opportunity tonight not to repeat that cycle by not passing this bill and making the amendments necessary to keep our intelligence strong.

Mr. CONYERS. Mr. Speaker, I am pleased now to recognize a very effective member of our committee, Mr. SCHIFF of California, as well as the gentleman Mr. FLAKE of Arizona, and I would yield them 2 minutes.

Mr. SCHIFF. I thank the chairman for yielding and for his leadership.

Over the last 2 years, I have worked with my Republican colleague JEFF FLAKE of Arizona to ensure that the government has all the tools necessary to pursue al Qaeda and all the other terrorists who would seek to harm our country while ensuring that the requirement of court approval of surveillance of Americans on American soil is met.

I am pleased that the committee has included many of the items we proposed, including reiterating FISA's exclusivity, providing robust oversight reporting, requiring FISA Court involvement when U.S. persons are involved, and clarifying that the interception of foreign-to-foreign communications does not require a court order.

To address a concern raised by Mr. FLAKE, our language makes clear that a court order would not be required for electronic surveillance directed at the acquisition of communications between persons that are not known to be U.S. persons and are reasonably believed to be located outside the U.S., without respect to whether the communication passes through the U.S. or the surveillance device is located in the U.S.

We have also placed additional safeguards to ensure this section is not abused and used to acquire communications of U.S. persons.

I am pleased to yield the balance of my time to my colleague.

Mr. FLAKE. I thank the gentleman for yielding. I have enjoyed working with Representative SCHIFF on this, and I thank the committee for addressing our concerns. Our concerns had to do mostly, my own concern in particular, with making sure that we are not involving a court when you are talking about foreign-to-foreign communications or communications between persons who are not known to be U.S. residents or not known or reasonably believed to be within the U.S. I believe those concerns were addressed here, and I appreciate the work that was done to do that.

As mentioned, our language also requires that if a U.S. citizen is inadvertently tripped up in the communication, that proper procedures are taken to deal with that and that the information is disseminated to the right people and committees. So I appreciate the committee's work on this.

Mr. SMITH of Texas. Mr. Speaker, I yield 2 minutes to the gentleman from Texas (Mr. GOHMERT), the deputy ranking member of the Crime Subcommittee of the Judiciary Committee.

Mr. GOHMERT. Mr. Speaker, to be accused of partisan maneuvering is pretty insulting. Some of us are not concerned about partisan maneuvering; we are concerned about the security of the United States. That is why I am here right now, not because of partisan maneuvering.

Do you want to talk partisan maneuvering? How about when I go out to get a copy of the most current bill and we have got a bait and switch. This isn't even the most current bill out there that we can get ahold of to come in and talk about. But I know the provision, and I appreciate my fine chairman talking about we have taken care of emergency situations, and then we had two Members just talk about emergency situations.

If you take these provisions, and hopefully the part I am talking about is the latest, that is the way I understand from what you are talking about, it says specifically in here, yeah, there is an emergency provision, but in order to get it, the Director of National Intelligence, Admiral McConnell, who was the National Security Advisor for President Clinton, he and the Attorney General have to jointly be able to swear that the targets of their acquisition are not reasonably believed to be located outside of the United States and they are not reasonably believed to be United States persons.

You take that with their testimony, the testimony was I cannot ever swear that. The way you do this intelligence is you go after a foreign target, and I can never testify, he said, as to who the person will be that they call. I can never testify that I reasonably believe they will be outside the United States when they call or that they will not be a United States person.

So, if he comes in and does this after he has testified ''I cannot say I reasonably believe that they will not call somebody in the U.S., when I don't know who they will call,'' then we got problems. This does not protect the problem. We need to vote ''no.''

Mr. REYES. Mr. Speaker, I yield 10 seconds to the gentleman from Iowa (Mr. BOSWELL).

Mr. BOSWELL. I thank the gentleman and I support the bill.

I submit for the RECORD an op-ed by our friend and former colleague, the Honorable Lee Hamilton, cochair of the 9/11 Commission, regarding the issue of retroactive immunity. The op-ed fully expresses my concerns regarding this issue, and I wish for all Members to have the benefit of reviewing it.

[From the Baltimore Sun, Nov. 4, 2007]

IMMUNITY FOR WIRETAP ASSISTANCE IS RIGHT CALL

(By Lee H. Hamilton)

If the local fire company asked for your help putting out neighbor's blaze, you would not force the firefighters to justify their request. You would just help, right? That's what the phone companies did when the Bush administration asked them in secret for help with wiretaps to target al-Qaida communications into and out of the country.

However, the president's warrantless wiretap program caused a furor when it became public. The administration had circumvented the Foreign Intelligence Surveillance Act, raising many doubts about the legality and even constitutionality of its wiretap program. The controversy prompted class-action lawsuits against phone companies that cooperated with the government.

The Senate Intelligence Committee has reported out a bipartisan bill that would bring this wiretap program back under the FISA statute and court review. It would ensure the legality and robust congressional oversight so lacking in the original program. It also would give the phone companies immunity for their previous actions.

The committee made the right call. To the extent that companies helped the government, they were acting out of a sense of patriotic duty and in the belief that their actions were legal. Dragging them through litigation would set a bad precedent. It would deter companies and private citizens from helping in future emergencies when there is uncertainty or legal risk.

The help and cooperation of all our citizens are vital in combating the threats we face today. Companies in various sectors of the economy are going to have information that could save the lives of thousands of Americans. When they respond in an emergency, at the call of our highest elected officials and on assurances that what they are doing is legal, they must be treated fairly. To do otherwise would put our security at risk.

This is particularly true of communications companies. They are critical to our intelligence and ''early warning'' against terrorist attacks. The increasing complexity of communications technology has made the voluntary cooperation of these companies vital.

Government actions require public review. Actions by private companies in response to government requests also should place the burden of accountability on the government. We should not expect private companies to second-guess the propriety and legality of government requests. That is the job of our public servants in the executive branch, the legislators who oversee them, and ultimately the courts.

Unless Congress provides immunity, the clear message will be that private citizens should help only when they are certain that all the government's actions are legal. Given today's threats, that is too high a standard. We should hold public officials accountable for their actions—and hold harmless private citizens and companies when they respond to government requests to help protect us.

Mr. REYES. Mr. Speaker, I yield 3 minutes to the gentlewoman from California (Ms. ESHOO), who serves as the chairwoman of our Subcommittee on Intelligence Community Management.

Ms. ESHOO. I thank the distinguished chairman of the House Intelligence Committee.

Mr. Speaker, this legislation very importantly covers espionage, terrorism, sabotage and all threats to our national security. That sentence alone frames what this issue is about and the seriousness of it.

The other part of it that fills out the frame is that it restores the FISA Court. It restores the FISA Court to its prominence, and, by doing so, it restores a legal framework for surveillance that must be conducted to protect our national security.

This legislation provides every meaningful tool of the legislation that was passed last August. But, unlike that bill, it protects the rights of the American people.

The legislation is true to its name. It restores the role for all three branches of our government by reestablishing the checks and the balances that have protected our security, as well as our rights as Americans. This is what the American people not only expect, it is what they have become accustomed to, and they like it.

This legal framework for the NSA surveillance is absolutely essential. When no Americans are involved, no judicial oversight is required. When an American communication may be intercepted, the court must approve the procedures for handling it. Finally, when an American is targeted, the court must be asked for an order.

The American people know all too well that this administration is now considered the most secretive in the history of our country. It has operated with unchecked power and without judicial or congressional oversight. We now know that the President went around the courts to conduct a program of warrantless surveillance of calls to Americans. We now know that the FBI abused the authorities granted under the PATRIOT Act improperly using National Security Letters to American businesses, including medical, financial and library records, instead of seeking a warrant from the court. In hundreds of signing statements, the President has quietly claimed he had the authority to set aside statutes passed by Congress.

Mr. Speaker, I think enough is enough. This bill says that the executive is not the imperial branch of government. It restores the fundamental balance struck by our Framers, to secure our Nation and to protect the rights of all Americans. Preserving that balance makes our Nation stronger, and this is at the core of the legislation before us. I urge my colleagues to support it.

Mr. SMITH of Texas. Mr. Speaker, I yield 3 minutes to the gentleman from California (Mr. LUNGREN) who is the senior member of both the Judiciary and Homeland Security Committees.

Mr. DANIEL E. LUNGREN of California. Mr. Speaker, I rise in opposition to this bill, and I am sorry that I have to do that. I respect the gentleman from Michigan (Mr. CONYERS). We have worked on many things together. I believe he is a prime time player, but I disagree with his statement that this bill is ready for prime time.

To just give one example, if you look at section 6 of this bill, section 6 of the bill differs with the way we handle minimization under current law by saying that if there is evidence of a crime, it cannot be disseminated to a criminal justice entity. Now, maybe there is a reason for that, but that has never been discussed whatsoever.

Secondly, I would say that in the two 1-hour Special Orders I gave, I raised the problem that exists in the underlying bill as we now see it, which is in the very beginning of the bill, and it deals with a section entitled ''treatment of inadvertent interceptions.''

It deals with a situation where the intelligence community believes in good faith that they are dealing with foreign-to-foreign, but inadvertently they capture communication that deals with foreign-to-domestic. And what we say here is that you cannot use that information for any purpose, any purpose. It cannot be disclosed. It cannot be disseminated. It cannot be used for any purpose or retained for longer than 7 days, unless what? A court order is obtained or unless the Attorney General determines that the information indicates a threat of death or serious bodily harm to any person, that the information indicates that.

I have stood on this floor on several occasions and said what that means is if we have a conversation or a communication involving Osama bin Laden, and everybody recognizes that might be the case, because in the manager's amendment we talk about Osama bin Laden, if in fact that occurs and the communication deals with someone within the United States, and he doesn't in that communication have information indicating a threat of death or serious bodily harm to any person, but indicates where he happens to be, the exact cave where he is at, we cannot operate on that in a timely fashion.

I would challenge any Member on the other side of the aisle to read the language in the underlying merged text, page 3, entitled ''Treatment of Inadvertent Interceptions,'' and tell me that I am wrong. This is, whether it is by mistake or you intended it to happen, giving greater protection to a terrorist around the world than you give to an American citizen charged with a crime.

I have said it before and I will say it again: I don't believe you intended this, but it is in the bill. As a matter of fact, the gentleman from New York, the chairman of the Constitutional Rights Subcommittee, came to me after we had an exchange on the floor on the issue and said, ''You are right. We goofed up. We should get rid of it.'' Yet we are here with it on the floor. For that reason alone, we ought to defeat the bill.

Mr. CONYERS. Mr. Speaker, I am stunned by my friend from California's comments, but I yield now 2 minutes to the gentleman from New York (Mr. NADLER), the chairman of the Constitution Subcommittee in Judiciary.

Mr. NADLER. I thank the gentleman.

Mr. Speaker, this legislation restores the proper role of the Foreign Intelligence Surveillance Court in the maintenance of our national security infrastructure. Let's get the terms of this debate clear before we begin. Anyone who can read will see that this bill does not inhibit the government's ability to spy on terrorists or on suspected terrorists or to act swiftly and effectively on the information we gather.

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The American people expect that their government will keep us all safe and free. This bill does that.

The bill does not require individual warrants of foreign terrorists located outside the United States. That has been the law for three decades; that is still the law.

The bill does provide reasonable FISA Court oversight to ensure that when our government starts spying on Americans, it does so lawfully by getting a warrant from the FISA Court. It will put an end to this administration's well-worn ''trust me'' routine.

I trust our intelligence community to gather solid intelligence on threats to our Nation. But protecting constitutional rights is not their prime job. That is why we have courts.

This bill provides for Congress to receive independent reports on how the act is working and what our government is doing. This administration's penchant for secrecy and aversion to accountability will come to an end, at least in this area.

Let me say a word for demands for retroactive immunity for the telecom companies. As many of our colleagues have pointed out, any such discussion is premature. We do not even know what we are being asked to immunize or whose rights would be compromised if we did so.

More importantly, Congress should not decide legal cases between private parties; that's for the courts. If the claims are not meritorious, the courts will throw them out. But if the claims do have merit, we have no right to wipe them without even reviewing the evidence. How dare we have the presumption to decide the rights of allegedly injured parties in the blind.

Mr. Speaker, this bill meets every single principle set forth by the Congressional Progressive Caucus. As one of the co-chairs of the caucus' FISA Task Force, I am pleased to support this important bill. It is true to our Constitution. It is true to our values. It is true to our safety. It will keep us safe and free.

This bill gives our intelligence agencies the tools they have told us they need to make us safe, and gives the FISA Court the tools it needs to ensure that the extraordinary powers we are giving to the intelligence community are used correctly and consistently with our laws and our Constitution.

It's called the separation of powers, with each branch of the government doing what it is supposed to do and acting as a check on the others. FISA exists to ensure that the balance between the needs of intelligence gathering and the protection of the rights of all Americans are balanced.

Most importantly, it restores the role of FISA as the exclusive legal basis for foreign intelligence surveillance. No more making it up as you go along.

Did the telecoms break the law? Were they acting appropriately? Were the rights of innocent Americans violated? We don't know.

How dare we have the presumption to decide the rights of allegedly injured parties in the blind?

Mr. SMITH of Texas. Mr. Speaker, I yield 2 minutes to the gentleman from Arizona (Mr. SHADEGG), a senior member of the Commerce Committee.

Mr. SHADEGG. I thank the gentleman for yielding.

I think this is a very, very important debate. I understand the frustration of the majority in trying to deal with this issue, but I believe they have created a structure that even they themselves don't understand, and a structure that fundamentally turns the Constitution and the role of at least two branches of the government upside down.

We have the executive branch which is charged with defending the Nation against foreign enemies and we have the judicial branch which is charged with applying and interpreting the laws. But it is charged with judging disputes between American citizens, not with making decisions how about to gather foreign intelligence.

Now, how does this bill work? Number one, it says if the executive branch in carrying out its duty to protect the country from foreign enemies knows in advance that both people, both ends of a telephone communication or some other electronic communication, are in fact foreigners, no warrant is needed.

Well, if we could be mind readers and if we could hire mind readers as intelligence officers, that might be useful. But everyone in the intelligence community tells you that have targeted one person, and without the ability to read the mind of that person, you don't know who the other person they are calling is.

So as a matter of fact, you can never know, never ever know, no CIA agent, no judge, nobody can ever know that both people are foreigners. And so if the law says if you don't know that both are foreigners, you must get a warrant from a judge.

Now they have said we are going to be reasonable about it; it is going to be a basket warrant. But that then gives the duty of protecting the Nation to a judge, an unelected judge.

Mr. REYES. Mr. Speaker, it is my pleasure to yield 2 minutes to the gentleman from New Jersey (Mr. HOLT), our chairman of the Select Intelligence Oversight Panel.

Mr. HOLT. I thank my friend and colleague from Texas.

Mr. Speaker, I rise in support of this bill. As many of you know, when the committee reported this bill to the floor, I expressed concerns that it

lacked provisions ensuring that the courts would decide whether the executive branch could seize and search communications of Americans.

The RESTORE Act now before us includes provisions via the manager's amendment that will ensure that it is the courts, not an executive branch political appointee, who decides whether or not the communications of an American can be seized and searched and that such seizures and searches must be done pursuant to an individualized court order.

This bill gives our citizens the best protection we can provide them, a sound intelligence collection that will foil our enemies and the review of the executive branch's surveillance actions by the court. In other words, each of us can say to each of our constituents: you have the protection of the court.

Now, it is important to note that this bill will provide better intelligence than existing law, the existing law which was passed in haste and fear. This bill, by applying checks and balances, improves intelligence collection and analysis. It has been demonstrated that when officials establish before a court that they have reason to intercept communications, we get better intelligence, better intelligence than we get through indiscriminate collection and fishing expeditions.

Mr. Speaker, this does it right. Mr. Speaker, I would like to close by thanking the staff of the committee, Jeremy Bash and Eric Greenwald; and from the Judiciary Committee, Lou DeBaca and Burt Wides; as well as the chairmen, Mr. REYES and Mr. CONYERS, who took my concerns to heart and made them their own concerns. It has produced a good bill. I urge my colleagues to vote ''yes'' for the RESTORE Act.

Mr. Speaker, the RESTORE Act will ensure that it is the courts—and not an executive branch political appointee—who decide whether or not the communications of an American citizen can be seized and searched, and that such seizures and searches must be done pursuant to a court order. This bill gives our citizens the best protection we can provide them: good intelligence collection against our adversaries, and review of the executive branch's surveillance actions by a court.

I was pleased to be able to work with my colleagues on the House Permanent Select Committee on Intelligence to add several key provisions to this bill. For example, the bill's most critical new provision ensures that the government must have an individualized, particularized court-approved warrant based on probable cause in order to read or listen to the communications of an American citizen. Inclusion of this provision was vital. We must be able to assure our citizens that their communications cannot be seized and searched by the government in the absence of a court order, and with this provision now in the bill, we can provide that assurance.

Another provision I worked to include requires the Court to review and approve not only the procedures and guidelines required under this Act, but also the application of those guidelines. This provision provides another important point of review by the courts that will help ensure that the Attorney General and the Director of National Intelligence are actually doing what they claim they are doing.

I also asked that a provision be inserted that makes it clear that the Foreign Intelligence Surveillance Act (FISA) is the sole statutory basis for domestic surveillance. This language was needed to remove any ambiguity. We cannot have any President inventing other claims for secret, warrantless surveillance.

The bill also provides additional resources to both the executive and judiciary branches for processing FISA applications and orders. The bill increases the number of Foreign Intelligence Surveillance Court (FISC) judges from 11 to 15, provides additional personnel to both the FISC and government agencies responsible for making and processing FISA applications, creates an electronic filing, sharing, and document management system for handling this highly classified data, and mandates training for all government personnel involved in the FISA process. All of this will help modernize and streamline the FISA application approval process.

Finally, the bill requires the Bush administration to ''fully inform'' Congress on all surveillance programs conducted since 9/11. It's outrageous that the Bush Administration has continued to stonewall this Congress over documents for the one program it has acknowledged. If we're to do our job of oversight, we need all the facts about past and current surveillance programs, and this provision will help us get those answers.

I hope our colleagues in the Senate will quickly pass the RESTORE Act, and I call upon the President to end his veto threats and work with Congress to bring America's surveillance activities into compliance with the Constitution.

President Bush has no inherent Constitutional authority to spy on our own citizens in the name of national security. If the President is serious about passing a law that allows us to protect our citizens from all enemies—foreign and domestic—he will sign this bill.

Mr. SMITH of Texas. Mr. Speaker, I am happy to yield 2 minutes to the gentleman from Missouri (Mr. BLUNT), the distinguished minority whip of the House.

Mr. BLUNT. Mr. Speaker, I thank the gentleman for yielding and for his hard work on the floor this evening, for the leadership of Mr. HOEKSTRA and others on this important bill. We need to modernize FISA to keep up with changes in communications technology and the continually evolving tactics of our terrorist enemies.

We made some important steps in this direction only 90 days ago. We all understand that more needs to be done. But rather than responding to this need, this legislation actually impedes the intelligence community's ability to conduct effective investigations and to prevent future terrorist attacks.

This act requires FISA court orders for the first time for thousands of overseas terrorist targets. The Director of National Intelligence, Admiral McConnell, has described this requirement as unworkable and impractical.

This act contains a sunset date which fails to provide the certainty under the law that our intelligence community needs to effectively do its job.

It doesn't provide the liability protections for telephone companies and other carriers that assisted the government after 9/11 who now have a flurry of harassing lawsuits facing them.

Mr. Speaker, the majority claims that this legislation will restore a balance between civil liberties and national security. In fact, this bill will restore the intelligence gap that existed prior to our actions the 1st of August.

I urge this legislation be defeated. The current bill is better than this bill. We need to deal with it certainly between now and the end of the 6 months, but let's not take a step backwards. Let's let the law do what this law was intended to do in 1978 and is doing today.

Mr. CONYERS. Mr. Speaker, it is my pleasure now to recognize the gentlewoman from Florida (Ms. WASSERMAN SCHULTZ), a member of the Judiciary Committee, for 1¼ minutes.

Ms. WASSERMAN SCHULTZ. Mr. Speaker, in August I urged my colleagues to vote against an unconstitutional Senate bill. Simply put, that bill trampled on our constituents' constitutional right to privacy.

Today, I am proud to rise in support of the RESTORE Act, a bill that provides the intelligence community the tools it needs, but that restores the constitutional rights of Americans.

Mr. Speaker, we can be both safe and free, and this bill strikes the right balance.

This bill permits surveillance of foreign-to-foreign communication. It allows us to listen in on Osama bin Laden or any other terrorist who threatens our troops or country. This bill will keep us safe.

But this bill also requires a warrant from the FISA Court in order to eavesdrop on the communications of ordinary Americans, and it requires a court review of targeting procedures to ensure Americans' rights are protected. This bill restores our civil liberties.

Mr. Speaker, our colleagues across the aisle would rather play politics with this bill and unleash arguments of mass distortion, so let me be clear: nothing in this bill gives our constitutional rights to terrorists.

Our Republican colleagues create this smoke screen in order to hide the fact that they have taken away those same constitutional freedoms from Americans.

We need not choose between our secure and liberty. With the RESTORE Act, we can have both.

Mr. HOEKSTRA. Mr. Speaker, I yield myself 1 minute.

This morning as we did the rules debate, I asked some questions of my colleagues on the other side of the aisle, and they said we will cover that during general debate tonight.

So the questions I have that I hope will be answered is in the manager's amendment that was presented this

morning and was voted on in the self-enacting rule talks about illegal aliens. The questions I have:

Would it allow surveillance against possible illegal aliens for law enforcement purposes?

Would it allow foreign intelligence surveillance to be conducted against transnational smuggling rings?

Would it allow surveillance to determine whether someone is an alien not permitted to be in or remain in the United States?

Would the amendment exempt undocumented aliens from the physical search requirements of FISA? Exactly how far does this amendment go? What is it intended to do?

These were the questions that I asked this morning that I hope will be answered tonight.

Mr. Speaker, I reserve the balance of my time.

Mr. REYES. Mr. Speaker, could I ask how much time remains on each side.

The SPEAKER pro tempore. The gentleman from Texas (Mr. REYES) has 6½ minutes remaining. The gentleman from Michigan (Mr. CONYERS) has 3¾ minutes remaining. The time has expired for the gentleman from Texas (Mr. SMITH). The gentleman from Michigan (Mr. HOEKSTRA) has 14 minutes remaining.

Mr. REYES. Mr. Speaker, I reserve the balance of my time so we can balance the time out with the gentleman from Michigan.

Mr. HOEKSTRA. Mr. Speaker, I yield 2 minutes to the gentleman from Texas (Mr. THORNBERRY), a member of the committee.

Mr. THORNBERRY. Mr. Speaker, it is unfortunate that here we are again debating a FISA bill that is more about politics than it is about the country. This bill is a cobbled-together mess designed to keep most of the Democratic Caucus together rather than a bill designed to meet the national security needs of the country. It is full of contradictory, unworkable provisions.

Most of this body and most of the American people agree that our intelligence professionals, civilian and military, should be able to gather foreign intelligence on terrorists and others without having a pack of lawyers trail along behind you. Unfortunately, that is exactly what they will need if this bill were to ever become law.

It is also sad that those who have volunteered to help defend us against terrorists are being punished. We debate Good Samaritan laws from time to time. The country needs Good Samaritans, as well, to help prevent terrorist attacks.

What the country needs, Mr. Speaker, is an updated law that intelligence professionals can really use, that really works in the field, not some cobbled-together mess designed to achieve a political purpose just before a recess. We can do better. I continue to hope that someday this House actually will.

□ 1900

Mr. REYES. I continue to reserve the balance of my time.

Mr. CONYERS. Mr. Speaker, I reserve the balance of my time.

Mr. HOEKSTRA. I yield 2 minutes to the gentleman on the committee, Mr. TIAHRT of Kansas.

Mr. TIAHRT. I thank the gentleman from Michigan for yielding to me. I rise in opposition to this bill.

I am really surprised by the procedure we have gone through to get to this point in this legislation. You know, under the underlying bill we had open hearings, we had closed hearings, we looked at a lot of the details and openly debated them and I thought we were making pretty good progress. But then, in the self-enacting rule, we have a whole bunch of new language that is dumped into this bill that has had no hearings.

In fact, section 18 says in this bill now, no rights under the RESTORE Act for undocumented aliens. It says: This Act shall not be construed to prohibit surveillance of an alien not permitted to be in the United States.

Undocumented aliens, no rights.

Then we get to what, the rights that the terrorists have in the underlying bill. Section 3 has procedures for authorizing acquisitions of communications, and there are 8 pages telling how we are going to protect the terrorists. They have got some rights protected under this bill.

Then we get to section 4, the emergency authorization. We have 8 more pages explaining how terrorists have more rights than undocumented aliens right here in the United States.

So then we listened to the gentleman from California (Mr. LUNGREN), who is the former Attorney General of the State of California, and he explains that, through the minimization procedures, that we are actually giving terrorists more rights than we do our own U.S. common criminals.

So what is the deal with this? It is really a mess. You have got terrorists at a higher status than undocumented aliens that are here in America and a lot of them just trying to make a living, and then you have got a higher standard for terrorists than you do for our own criminals. Now, why don't we balance things out here? Why don't we balance things out? You have tried to push this thing through without hearings, you have hodgepodged it together, and it truly is a mess. We ought to send this back to committee and do the right thing on this.

We want to protect the rights of American citizens, and we think that humans have a certain set of rights, too. But this bill does not provide it. It has mixed standards. It is a mess, and I think we should vote it down.

Mr. REYES. Mr. Speaker, I reserve the balance of my time until we balance out the time.

Mr. HOEKSTRA. Mr. Speaker, I think we have balanced the time. We chose on our side to go with the 15 minutes of Judiciary time and then 15 minutes of Intelligence time. I believe the people in opposition to this bill now have 10 minutes; the people who are supportive of this bill have 11. That sounds like balance to me.

I reserve the balance of my time.

Mr. REYES. Mr. Speaker, how much time is remaining?

The SPEAKER pro tempore. The gentleman from Texas (Mr. REYES) has 6½ minutes remaining. The gentleman from Michigan (Mr. HOEKSTRA) has 10½ minutes remaining. The gentleman from Michigan (Mr. CONYERS) has 3¾ minutes remaining.

Mr. REYES. Mr. Speaker, I will now yield 1½ minutes to the distinguished gentlewoman from Illinois (Ms. SCHAKOWSKY).

Ms. SCHAKOWSKY. Mr. Speaker, I rise in support of the RESTORE Act because I believe that the way we conduct the fight against terrorism says a great deal about who we are as a people.

We all want to keep the country safe from terrorism and to provide the necessary tools to our intelligence community, but I am not willing to sacrifice who we are and what we stand for just because this President says so.

The President's Protect America Act cut the FISA Court out of the process. The RESTORE Act puts the court back in. Now, the court, not the President, will decide whether the constitutional legal requirements are met. The court will assess in advance a program of surveillance that may intercept the communications of Americans. The court will ensure that the system the NSA establishes will protect the rights of any Americans they come across. The RESTORE Act clarifies the Protect America Act cannot be used to conduct secret searches of Americans' homes, businesses, computers, and medical records. It reiterates the exclusivity of FISA, which would put an end to secret, warrantless spying programs. It makes clear that the President has to obey the laws.

The RESTORE Act requires meaningful reporting to the Congress about the warrantless surveillance programs that have occurred since September 11, and it will require meaningful oversight in the future. The RESTORE Act will make America safer and keeps us true to who we are as a Nation. I urge my colleagues to vote ''yes.''

Mr. HOEKSTRA. Mr. Speaker, I yield 2 minutes to my colleague from California (Mr. LUNGREN).

Mr. DANIEL E. LUNGREN of California. I thank the gentleman for yielding.

Once again, I would ask my friends on the other side of the aisle: Can anyone explain why, on page 3, you give stronger rights to someone who is a suspected terrorist, even Osama bin Laden, if he has a communication we intercept believing it was going to be foreign-to-foreign, now foreign to someone in the United States, and in that he reveals where he is, why we cannot use that information as we are able to with a legal wiretap in the United States on an American citizen

charged with a crime who calls someone who is not a target of a crime? I do not understand it. Page 3. Is there anybody on your side who can explain why you would have that?

The silence has been deafening for a month now on this.

Mr. CONYERS. Would the former Attorney General of California yield?

Mr. DANIEL E. LUNGREN of California. I would be happy to yield if the gentleman would tell me exactly what I just asked.

Mr. CONYERS. That is why I seek to have you yield to me, sir.

Osama bin Laden is never going to have any rights superior to any citizen.

Mr. DANIEL E. LUNGREN of California. Reclaiming my time, because I asked you to specifically talk about the language in the bill. I have read it and read it and read it, and you have refused to respond to it, even though the chairman of the Subcommittee on Constitutional Rights told me that I was correct in my reading of the bill and that you folks were going to change it. You didn't change it. I expect that is because you forgot about it.

I would invite the gentleman from New York to respond to me, because he intellectually honestly told me just 2½ weeks ago that you folks were going to change it. Why haven't you done it?

Mr. Speaker, the silence I think speaks volumes. This is a bill that is not ready for prime time. It inadvertently protects Osama bin Laden with greater rights than an American citizen charged with a crime.

Mr. CONYERS. Mr. Chairman, it is very important that we understand that Mr. LUNGREN in his dramatic presentation about the cumbersomeness and the protections that we are affording bin Laden almost begs the question here.

We have been on this bill for several times. We have got a carve-out here. Nothing prevents conducting lawful surveillance that is necessary to, one, prevent Osama bin Laden and al Qaeda or any other terrorists, Mr. LUNGREN, or any ally of those persons from receiving any of these protections. We can operate against them without giving them any rights, and I think you must know that by now.

Mr. DANIEL E. LUNGREN of California. Mr. Speaker, will the gentleman yield?

Mr. CONYERS. I can't give you time. I have got less than anybody here. No. I reserve the balance of my time.

ANNOUNCEMENT BY THE SPEAKER PRO TEMPORE

The SPEAKER pro tempore (Mr. ROSS). All Members are reminded to address their remarks to the Chair.

Mr. HOEKSTRA. Mr. Speaker, at this time I yield 2 minutes to my colleague from Arizona (Mr. SHADEGG).

Mr. SHADEGG. Mr. Speaker, I want to point out that this bill raises a fundamental question: Do we trust judges, unelected judges, to control foreign intelligence? Are we going to move that responsibility from the executive branch to judges? Or is that not their job?

As I explained earlier, this measure requires that a warrant be obtained every single time you are seeking to gather foreign intelligence. That means that we are asking Federal judges, who are unelected, to decide in 100 percent of the cases whether we can or cannot gather intelligence.

Now, I respect judges. I admire judges. But judges have the duty of deciding disputes between Americans. They do not have the responsibility to protect our Nation. But this bill says you can never gather intelligence from a foreigner without first going and getting a warrant.

So a job that under our Constitution has been given to the executive branch, that is, to conduct foreign intelligence and protect the Nation, we are now taking from the executive branch and giving to judges. Because unelected Federal judges, who have no responsibility to protect our Nation, no responsibility to gather foreign intelligence, now get to decide, this has never been true in the history of our Nation, whether or not the Federal Government will gather any intelligence.

I respect judges. I am all for judges. If I am in a dispute over the civil rights of an American, I want a judge to decide. But when it comes to gathering intelligence about terrorists, we are going to take that authority away from the executive branch, which we have never done in the past, and give it to judges and judges only? Judges whom we cannot defeat in office, judges who are appointed, judges who do not stand for election, judges who cannot be voted out of office? We are going to take the authority away from the executive branch to protect our Nation and in 100 percent of cases give it to unelected judges. That is a mistake.

Mr. REYES. Mr. Speaker, I think we just saw some shrill out of options articulation there.

I now yield 1½ minutes to the gentleman from Rhode Island (Mr. LANGEVIN).

(Mr. LANGEVIN asked and was given permission to revise and extend his remarks.)

Mr. LANGEVIN. Mr. Speaker, I rise in support of H.R. 3773. This legislation does exactly what our Constitution requires us to do: protect security while preserving civil liberties.

Maintaining that balance has sometimes been difficult, and the events of 9/11 have made it even more challenging. However, the RESTORE Act is a carefully crafted solution. We all recognize the gravity of the threats facing our country, and this bill gives the Director of National Intelligence all the authority he has asked for to fight terrorism while at the same time it protects civil liberties.

Further, the RESTORE Act provides for rigorous and independent oversight from the courts, the Congress, and the Department of Justice Inspector General. In our committee markup, I successfully offered an amendment to even strengthen this oversight by preserving the FISA Court's role to review compliance with their rules every 90 days for the life of a court order.

Rigorous oversight is why the Bush administration objects to this bill. They want unfettered authority. Unfortunately, we have seen what happens without checks and balances, and I will not allow that to happen again. As Members of Congress, we took an oath to defend the Constitution and the principles on which it was founded.

I urge my colleagues to support H.R. 3773, which provides security while preserving the fundamental values that make this country so great.

Mr. HOEKSTRA. Mr. Speaker, I yield 3 minutes to my colleague from the State of New Mexico (Mrs. WILSON).

Mrs. WILSON of New Mexico. Mr. Speaker, my colleague from Rhode Island talked about the importance of upholding the Constitution, and there is something in the manager's amendment to this bill that was inserted without any hearing in the committee that I don't understand, that makes no sense to me. It is a provision that says, very plainly: This act and the amendments made by this act shall not be construed to prohibit surveillance of, or grant any rights to, an alien not permitted to be in or remain in the United States.

Now, I think there are probably a lot of people on this side of the aisle who don't have a problem with that provision. What I don't understand is why you all are proposing it.

Here is the irony here. This bill will extend rights under our Constitution to foreigners in foreign countries, while denying the protections of the Constitution to some 12 million people who are not legally in the United States, when the case law is clear that they do have rights. Whether we think they should have rights or not, the case law is absolutely clear. So we will deny those rights to people in the United States while extending them to people in foreign countries?

I think we should be clear with the American people why we insisted on fixing the Foreign Intelligence Surveillance Act, and did so successfully in August. We had soldiers who were kidnapped in Iraq by insurgents.

□ 1915

And because of changes in technology and the demands of the court, the American military had to go to lawyers in the United States to get a warrant to try to intercept the communications of the terrorists trying to kill them. That took time, too much time. And the law had to be fixed.

Soldiers should not need an army of lawyers in Washington to listen to the communications of the enemy that's trying to kill them. This needed to be fixed, and we fixed it the first week of August.

We all remember where we were on the morning of 9/11. We remember who we were with, what we were wearing, what we ate for breakfast.

But people don't remember where they were the day that the British Government arrested 16 people who were within 48 hours of walking on to airliners and blowing them up simultaneously over the Atlantic. We don't remember it because it didn't happen. And the reason it didn't happen is because of exceptional intelligence and the cooperation of the British, Pakistani and American Governments.

Mr. REYES. Mr. Speaker, I'm concerned about the self-induced confusion on the other side.

I now yield 1¾ minutes to the gentleman from Pennsylvania (Mr. PATRICK J. MURPHY) who served in Iraq and also serves with me on the Armed Services Committee, as well as our Intelligence Committee.

Mr. PATRICK J. MURPHY of Pennsylvania. Mr. Speaker, I rise today in support of the RESTORE Act and to set the record straight on an issue that is close to my heart.

In May of 2007, three men from the 10th Mountain Division were captured in Iraq. They're names are Specialist Alex Jiminez, Private First Class Joseph Anzak, and Private Byron Fouty. I recite their names because the right wing attack machine never does. But these are the facts, and they're not pretty.

The intelligence community stood ready to help find these three soldiers. But for 5 hours, for 5 hours, the Bush administration could not decide what to do. When they decided to go ahead, no Bush administration official could authorize it, could be found to authorize it. But when they finally found the Attorney General in Texas, it took an additional 2 hours to authorize the surveillance, even though he could have granted the authority in just minutes. Hours of indecision and incompetence while these three soldiers went missing.

* * * * *

While the RESTORE Act can solve many problems posed by the current FISA law, it will not solve the problem in these soldiers' situations.

Mr. DANIEL E. LUNGREN of California. Mr. Speaker, I ask the gentleman's words be taken down with respect to the use of the word ''deceit.''

The SPEAKER pro tempore. All Members will suspend.

The Clerk will report the words.

Mr. PATRICK J. MURPHY of Pennsylvania. Mr. Speaker, this has been a very powerful and emotional debate today, and the issue is very close to my heart. I did not mean to offend anyone across the other side of the aisle. And I ask the Speaker and the other side for unanimous consent to withdraw the paragraph that may have given offense to some Members that were on the floor.

The SPEAKER pro tempore. Is there objection to the request of the gentleman from Pennsylvania?

There was no objection.

The SPEAKER pro tempore. In this debate, the gentleman from Texas (Mr. REYES) has 1¾ minutes remaining, the gentleman from Michigan (Mr. CONYERS) has 2 minutes remaining, and the gentleman from Michigan (Mr. HOEKSTRA) has 3½ minutes remaining.

Mr. HOEKSTRA. Mr. Speaker, I yield myself 30 seconds.

I just want to make a couple of points. Again, no one has answered the questions that I asked earlier today and that I asked in the debate tonight. The amendment talking about illegal aliens, would it allow for surveillance against possible illegal aliens? Would it allow for foreign intelligence surveillance to be conducted against transnational smuggling gangs? Would the amendment exempt undocumented aliens from the physical search requirements?

And then just to reiterate the point that my colleague made in the previous speech, this is all about lawyering up the process, and that's what extends the time.

At this point, I yield 1 minute to my colleague, Mr. KIRK of Illinois.

Mr. KIRK. I thank the gentleman. And as the leader of the moderates in this, I would say that this issue should unite us all as Americans, not divide us along partisan lines.

I also speak as a Navy intelligence officer that would say that the provision that was newly included in this legislation says that nothing in this act shall prevent an intelligence officer from monitoring someone related to al Qaeda, Osama bin Laden or Ayman al-Zawahiri to prevent an attack against the United States. But so much of our intelligence is beyond the imminent attack on the United States. So much of us in the intelligence world, we have to watch the earliest signs of this.

Let's be clear, this bill before us has nothing to do with the rights of U.S. citizens; those are already protected. As an intelligence officer, we are always drilled on the code of conduct in dealing with U.S. persons. This bill has everything to do with creating new rights for people overseas. And I think we should let our intelligence community monitor whoever Osama bin Laden is talking with to protect the United States, even if an attack is not imminent.

□ 1945

Mr. CONYERS. Mr. Speaker, I yield for the purpose of making a unanimous consent request to the gentleman from Virginia (Mr. SCOTT).

(Mr. SCOTT of Virginia asked and was given permission to revise and extend his remarks.)

Mr. SCOTT of Virginia. Mr. Speaker, I rise in favor of the legislation.

Mr. Chairman, I appreciate your leadership on efforts to address warrantless surveillance under the Foreign Intelligence Surveillance Act, or ''FISA'' and for introducing a bill that corrects many of the shortcomings of the bill that passed the House last August.

The RESTORE Act establishes a strong framework, much stronger than the Administration's PROTECT Act, to fight terrorism effectively, while providing reasonable safeguards to protect personal privacy.

One important change in the Restore Act is that it draws the appropriate distinctions based on the physical location and types of targets. There has never been any controversy over the fact that surveillance directed at people all of whom are overseas does not need any warrant at all. This bill rightly makes it clear that no court orders are required for the government to conduct surveillance on foreign targets outside the United States, even if the technical surveillance is conducted on U.S. soil. But if any surveillance is intentionally conducted on a U.S. person, this bill makes it clear that the government needs to apply for an individual warrant to conduct that surveillance. And if information on U.S. persons is incidentally collected, the Manager's Amendment to the bill rightly limits dissemination of that information among government agencies.

Second, the bill removes vague and overbroad language from the bill passed in August that would allow the wiretapping of conversations without a warrant if the communication was ''concerning'' a foreign target. That, by its own wording, suggests that if two citizens are in the United States talking about somebody overseas, that you could wiretap their communications without a warrant. The bill before us makes it clear that the persons involved in the communications must be overseas, not just that the subject of their conversation must be overseas.

Third, the RESTORE Act goes a step further than the Administration's bill and allows for the expanded wiretapping authority only in cases involving ''national security,'' as opposed to the over-expansive ''foreign intelligence.'' ''Foreign intelligence'' could include trade, deals or anything involving general foreign affairs activities.

Finally, the RESTORE Act was made even stronger in Committee by requiring the Department of Justice, in its application to the Court, to identify the ''primary purpose'' of its wiretapping. Under the original FISA, when an agent wanted to obtain the authority to conduct electronic surveillance or secret searches, a certificate was necessary detailing what the purpose of the surveillance was in order to obtain the warrant. The standard was altered by the Patriot Act, which provided that obtaining foreign intelligence only has to be ''a significant purpose.''

We have to put this change in context because the Department of Justice has not credibly refuted the allegations that some U.S. Attorneys were fired, because they failed to indict Democrats in time to affect an upcoming election. So if the Department of Justice wiretapped someone when foreign intelligence was not the primary purpose, you have to wonder what the primary purpose was. This bill would allow the surveillance to be conducted but the administration would be required to reveal the true purpose of the wiretap to the secret FISA court.

Mr. Speaker, I want to emphasize that we do not have to balance security and privacy. It is therefore important to note that everything that the administration can do in its own bill, it can do under this bill. We just require them to get a warrant before they do it, or if they are in a hurry, get a warrant after they do it, but they can wiretap and get the information. We just provide a modicum of oversight to ensure that our laws are being obeyed. I urge my colleagues to support the bill.

Mr. CONYERS. Mr. Speaker, I am now pleased to yield 1 minute to the Speaker of the House, the gentlewoman from California, NANCY PELOSI.

Ms. PELOSI. Mr. Speaker, as one who has long served on the Intelligence Committee, I understand full well the threats to our national security. I understand full well the need for us to have legislation that strikes the proper balance between liberty and security. I think this legislation does just that. And I commend Chairman CONYERS, chairman of the Judiciary Committee; and the chairman of the Intelligence Committee, Chairman REYES, for their important work and their leadership in presenting this legislation to the floor for consideration.

The bill is important and accomplishes the goal of striking the balance between security and liberty in the following ways: it defends Americans against terrorism and other threats; it protects Americans' civil liberties; and it restores checks and balances.

The bill protects Americans by providing the Director of National Intelligence with the flexibility he has requested of Congress to conduct electronic surveillance of persons outside the United States. No warrants are required whenever foreign-to-foreign communications are captured regardless of the point of collection or anywhere in the world.

It protects our civil liberties in a number of ways. The DNI has agreed that when Americans are targeted for surveillance, a warrant is required. We have now included certain criteria that the government must take into account in considering whether a warrant is required. This will help prevent inappropriate warrantless surveillance and ''reverse targeting'' of Americans under the guise of foreign intelligence.

The bill restores checks and balances. This is very, very important because it, again, is part of our oath of office to protect the Constitution of the United States. The bill rejects groundless claims of ''inherent executive authority.''

There are those who claim that the President has inherent authority from the Constitution to do whatever he wishes. Long ago our Founders rejected that concept in founding our country. We must do that as well and continue to make that clear.

The legislation also makes clear that FISA is the exclusive means for conducting electronic surveillance to gather foreign intelligence. The government must seek approval from a FISA Court. So we are talking about the Congress of the United States passing legislation, as it did in the late seventies, passing this legislation today which is in light of the new technologies and new reality in the world, and recognizing the authority of the third branch of government: the courts.

This legislation includes extensive reporting to Congress with respect to the interception and dissemination of communications among Americans and from Americans. This is very important because we want to minimize the use of that information and keep it for the purpose for which it is collected.

Most significantly, the bill does not provide immunity to telecommunications companies that participated in the President's warrantless surveillance program. We cannot even consider providing immunity unless we know exactly what we are providing immunity from. And even then, and even then, we have to proceed with great caution.

It is important to note that the bill sunsets on December 31, 2009, the date the PATRIOT Act sunsets, so the next administration and the next Congress can review and reassess the program.

This legislation is supported by organizations dedicated to protecting our national security and protecting our civil liberties, including the Center for National Security Studies, the Center for Democracy and Technology, and many other groups that work to protect privacy rights. The bill protects both national security and civil liberties, reaffirms our constitutional system of checks and balances, and deserves the support of this House.

Mr. Speaker, all of us want our President to have the best possible intelligence, our President and our policymakers, so they can do the best possible job to protect the American people. But no President, Democrat or Republican, should have the authority, to have inherent authority, to collect on Americans without doing so under the law. This legislation establishes that principle; and it establishes it in a very focused way in keeping with the need for flexibility for the Director of National Intelligence, in keeping with honoring our oath of office to the Constitution. I urge our colleagues to support this important legislation.

I, for one, am very, very proud of the work of Mr. CONYERS and Mr. REYES and thank them for their leadership.

Mr. HOEKSTRA. Mr. Speaker, I yield myself 1 minute.

A month after I originally came to the floor to oppose this bill, I now rise in opposition to this flawed legislation, which, disappointingly, has been made worse ever since we started the process.

In August Congress finally acted, after months of prodding from Republicans, to close significant intelligence gaps against potential foreign terrorists in foreign countries that jeopardize America's ability to protect and prevent potential terrorist attacks and to effectively collect intelligence on foreign adversaries.

Now we have a simple choice: Do we do what is necessary to provide long-term legal authority for our intelligence community to conduct necessary surveillance, or do we reopen that intelligence gap?

It now seems that the majority is determined to move a bill intended to make political statements rather than to give intelligence professionals the tools that they need to protect our country.

I urge my colleagues to vote against this bill.

Mr. REYES. Mr. Speaker, I yield 1 minute to our distinguished majority leader, Mr. HOYER of Maryland.

Mr. HOYER. I thank my friend for yielding. I thank him for his leadership as well. I thank Mr. CONYERS for his leadership, and I thank Mr. HOEKSTRA and Mr. SMITH for their participation.

This is a serious issue that confronts us. Mr. Speaker, this legislation, the RESTORE Act, is nothing less than the fundamental reiteration of the most basic concepts of our Constitution, our constitutional form of government that we, indeed, are a Nation of laws and that our Founders deliberately designed our three branches of government to serve as a check and balance on each other.

One of my colleagues, my friend, I believe, from Arizona, stood and said it was not the job of judges to conduct intelligence. He was correct. It is not the job of judges to conduct intelligence. But it is the constitutional duty given by our Founding Fathers, who understood that King George too often abused his sovereign power and who said to all that they would have adopt this Constitution that we will protect you from the abuse of power of government, and we will do it by having it reviewed by independent judges, not by the legislature.

We can be told by judges that we are not acting constitutionally, and that is a protection for our people against congressional abuse of power. And the executive department can be told by judges you are abusing your constitutional power. No power, no protection was felt to be more necessary and important by our Founding Fathers than their right to personal privacy and a lack of intrusion by King George just because he wanted to do it. And they said King George had to have probable cause, in this case, the Government of the United States. So that's why they established the courts. And we, in our wisdom, in my view, established the FISA Court to do just that.

Every single one of us here recognizes that our highest duty is to protect the American people. Indeed, we must detect, disrupt, and eliminate terrorists who have no compunction about planning and participating in the mass killing of innocent people. We saw that tragically on 9/11. We also, each one of us, come to this well or stand at our seats and raise our hand and swear an oath to defend the Constitution of the United States, to protect its laws and to honor the values and principles that are contained therein. That is our oath. That is what we do here this night, including the fourth amendment right that Americans are secure in their persons, houses, papers, and effects against unreasonable searches and seizures. That's not an assertion on any individual or any government or even the

legislature. It was an assertion by our Founding Fathers that they had seen too often abuses by the executive agencies of government.

Our basic duties as Members of this Congress, protecting the American people and protecting the values that define us as Americans, are not mutually exclusive. We can protect our country and protect our Constitution. That is our duty.

And that is precisely what this historic act, introduced by Chairman REYES and Chairman CONYERS, has done. This legislation gives our intelligence community the tools it needs to listen in on those who seek to harm us while addressing concerns that the bill passed in August could authorize warrantless surveillance of Americans. That is our concern. That is our focus.

Among other things, this legislation modernizes the technologically outdated Foreign Intelligence Surveillance Act of 1978 by restoring a checks and balances rule for the FISA Court and addressing the intelligence gap asserted by the Director of National Intelligence.

□ 2000

We heard Director McConnell. We want to help Director McConnell. Let us be clear. This legislation does not require a warrant for listening in on suspected and known terrorists, period. An assertion to the contrary is not accurate. In fact, it clarifies that no court order is required for surveillance of conversations where both parties are foreign citizens. It does not extend constitutional rights to suspected or known terrorists, assertions to the contrary notwithstanding. Nor does it delay the collection of intelligence information.

Furthermore, it grants the Attorney General and the Director of National Intelligence authority, authority to apply to the FISA Court for a block order, not an individual order, not a discrete order, but a block order saying that you can pursue this gathering of information to protect America, but you cannot do it simply because you want to do it. You've got to do it consistent with the Constitution of the United States and the laws thereof. You cannot conduct freelance surveillance without some authority of law.

The FISA Court can give a block order to conduct surveillance on large groups of foreign targets for up to a year, and that can be renewed, ensuring that only foreigners are targeted and Americans' rights are preserved. That was the whole reason in a bipartisan way we adopted FISA, to make sure that was the case.

Why do you fear a FISA Court reviewing that basic principle that was its intent at its adoption?

Finally, the legislation is silent on the issue of retroactive immunity for telecommunications companies that possibly violated privacy laws in turning over consumer information to the government. We don't make that judgment today. We need to review information to know what was done before we immunize conduct which we do not know. Simply stated, it would be grossly irresponsible for Congress to grant a blanket immunity for companies without even knowing whether their conduct was legal, appropriate, reasonable or not. Don't you think the American public, each one of our constituents, expects that of us?

In closing, Mr. Speaker, let me quote The Washington Post, which stated in October, the measure produced by the House Intelligence and Judiciary Committees would alleviate the burden of obtaining individualized warrants for foreign targets while still maintaining a critical oversight for the FISA Court. In other words, we are relieving the administration from the burden of discrete approval. But we are providing for the protections that Americans expect under our Constitution.

Mr. Speaker, we must give our Commander in Chief, the President of the United States and the intelligence community the resources, the authority, and flexibility that is necessary to protect our people and defend our Nation. I believe each of us in this Congress support that objective. But we must also honor the values and principles that make us Americans. This legislation allows us to do both.

I urge my colleagues on both sides of the aisle, facilitate the interception of information and terrorist communication dangerous to our people and our country. And at the same time, redeem that oath of protecting and defending our Constitution.

Mr. HOEKSTRA. Mr. Speaker, may I inquire as to the order of closing.

The SPEAKER pro tempore (Mr. ROSS). The Chair will recognize for closing speeches in the reverse order of opening, the gentleman from Michigan (Mr. HOEKSTRA), the gentleman from Texas (Mr. REYES) and the gentleman from Michigan (Mr. CONYERS).

The gentleman from Michigan (Mr. HOEKSTRA) has 1 minute remaining. The gentleman from Texas (Mr. REYES) has 45 seconds remaining. The gentleman from Michigan (Mr. CONYERS) has 1 minute remaining.

Mr. HOEKSTRA. Mr. Speaker, I thank my colleagues and thank you for this debate.

At this point in time to close our debate I would like to recognize the distinguished minority leader, Mr. BOEHNER of Ohio.

Mr. BOEHNER. Let me thank my colleague for yielding.

Mr. Speaker, in August the Congress passed the Protect America Act. Before that bill passed, our intelligence officials did not have the tools they needed to protect our troops and to detect and prevent terrorist plots. This was made clear in a story we read about just last month about our, how our FISA laws failed our soldiers who were kidnapped in Iraq, and I think these outdated laws actually hampered their rescue. That is because our FISA laws in place before the Protect America Act entrusted government lawyers, not our intelligence professionals, to protect our troops and our security.

Yet the bill we are considering today only makes this problem worse. It reopens the terrorist loophole and doesn't ensure that we can act quickly on vital intelligence to protect our troops and the American people. I think it would be a boon to trial lawyers who could take actions against third parties who assisted our government at our request after 9/11. It is yet another example of a troubling pattern of behavior on the part the majority, a pattern of behavior that is undermining our national security. Let me just give you a few examples.

The majority want to extend habeas corpus rights to terrorists. The majority has had over 40 votes in the Congress trying to force retreat in Iraq. The majority wants to close down our Guantanamo detention facility and move those terrorists into American communities. The majority, in their intelligence authorization bill and appropriation bill, are diverting key intelligence resources away from terrorist surveillance to study global warming.

In August, all the Members of this House succeeded in modernizing FISA and closing the terrorist loophole. We did so because terrorists were plotting to kill Americans and our allies, and there is no nice way of saying that. So why on Earth would we tie the hands of our intelligence officials again and open up this loophole that allows terrorists to jeopardize the safety of our troops and jeopardize the safety and security of the American people?

Our country is safer today because of our efforts, and Republicans want to work with Democrats to make the Protect America Act permanent. We were very close to a bipartisan agreement on this bill just about 5 weeks ago, very close. As a matter of fact, there was an agreement in principle until the ACLU got ahold of it and blew the entire bipartisan process up. I think the American people want us to do everything we can to make sure that they are safe and secure. The bill that we have before us will once again tie the hands of our intelligence officials and make America less safe. This is not the bill that I want to vote for.

Mr. REYES. Mr. Speaker, this bill, the RESTORE Act, is about balance. It is about putting checks and balances back in the process. It puts the FISA Court back in the process of protecting Americans. It corrects unchecked authority that we gave through the Protect America Act. Some would want us to continue to rubber-stamp what the administration wants. The American people deserve better.

Mr. Speaker, Halloween is over. Why do our colleagues continue to pull ghouls out of the closet? It is now time to talk turkey.

I yield back the balance of my time.

Mr. CONYERS. Mr. Speaker, I am privileged to yield the balance of our

time on our side to the distinguished gentlewoman from Texas, SHEILA JACKSON-LEE, an invaluable member of the Judiciary Committee.

Ms. JACKSON-LEE of Texas. I thank both chairmen, Chairman CONYERS for his leadership and Chairman REYES. In the month of August, I stood here and shredded paper to reflect that the vote we took on that bill was really a destruction of the Constitution. I am very glad to be able to stand here today to hold the Constitution sacredly in my hand and to indicate that this bill does, in fact, offer a restoration of the civil liberties of Americans but yet does not protect one single terrorist.

It is a bill that avoids reverse targeting of Americans. But it is a bill that provides the opportunity that if there was a pending threat against the United States, the Attorney General, the National Security Director, and three others could, in fact, prevent a terrorist act from occurring in the United States. This restores justice and it protects the American people.

Mr. Speaker, I rise today in support of H.R. 3773, introduced by my colleague Mr. CONYERS. Had the Bush administration and the Republican-dominated 109th Congress acted more responsibly in the 2 preceding years, we would not be in the position of debating legislation that has such a profound impact on national security and on American values and civil liberties in the crush of exigent circumstances. More often that not, it is true, as the saying goes, that haste makes waste.

Mr. Speaker, the legislation before us is intended to fill a gap in the Nation's intelligence gathering capabilities identified by Director of National Intelligence Mike McConnell, by amending the Foreign Intelligence Surveillance Act, FISA. It gives our intelligence professionals the tools they need to legally monitor suspect foreigners outside the United States, while protecting the fundamental rights of Americans at home.

Nearly two centuries ago, Alexis de Tocqueville observed that the reason democracies invariably prevail in any martial conflict is because democracy is the governmental form that best rewards and encourages those traits that are indispensable to martial success: initiative, innovation, resourcefulness, and courage.

The United States would do well to heed de Tocqueville and recognize that the best way to win the war on terror is to remain true to our democratic traditions. If it retains its democratic character, no nation and no loose confederation of international villains will defeat the United States in the pursuit of its vital interests. A major challenge facing the Congress today is to ensure that in waging its war on terror, the administration does not succeed in winning passage of legislation that will weaken the Nation's commitment to its democratic traditions.

This is why the upcoming debate over congressional approval authorizing the administration to conduct terrorist surveillance on U.S. soil is a matter of utmost importance. I offer some thoughts on the principles that should inform that debate.

In the waning hours before the August recess, the House acceded to the Bush administration's request and approved the woefully misnamed ''Protect America Act,'' which gives the Federal Government enlarged powers to conduct electronic surveillance of American citizens under the guise of conducting surveillance of foreign terrorists.

Mr. Speaker, FISA has served the Nation well for nearly 30 years, placing electronic surveillance inside the United States for foreign intelligence and counter-intelligence purposes on a sound legal footing. Given the exigent circumstances claimed by the administration, I am prepared to support a number of temporary changes to FISA legislation, provided that they follow certain principles.

First, I am prepared to accept temporarily eliminating the need to obtain a court order for foreign-to-foreign communications that pass through the United States. But I do insist upon individual warrants, based on probable cause, when surveillance is directed at people in the United States. The Attorney General must still be required to submit procedures for international surveillance to the Foreign Intelligence Surveillance Court for approval, but the FISA Court should not be allowed to issue a ''basket warrant'' without making individual determinations about foreign surveillance. There should be an initial emergency authority so that international surveillance can begin while the warrants are being considered by the Court. And there must also be congressional oversight, requiring the Department of Justice Inspector General to conduct an audit every 60 days of U.S. person communications intercepted under these warrants, to be submitted to the Intelligence and Judiciary Committees.

This legislation allows the interception of electronic communications between foreigners outside of the United States without a warrant and permits the director of national intelligence and the attorney general to seek ''blanket'' warrants to intercept communications of people reasonably believed to be outside the United States, even if such communication happens to involve ''U.S. persons.'' Wiretap surveillance could be conducted for 7 days before a warrant must be sought, and the secret Foreign Intelligence Surveillance court would have to act on the application for a blanket warrant within 15 days.

This legislation has many other important provisions. It affirms that FISA is the exclusive source of legal authority for conducting electronic surveillance for foreign intelligence. Crucially, it does not grant amnesty to telecommunications companies for any past violations of law. Finally, it gives the FISA Court more oversight authority and terminates the authorization to conduct foreign surveillance on U.S. soil after 2 years.

In all candor, Mr. Speaker, I must restate my firm conviction that when it comes to the track record of this President's warrantless surveillance programs, there is still nothing on the public record about the nature and effectiveness of those programs, or the trustworthiness of this administration, to indicate that they require any legislative response, other than to reaffirm the exclusivity of FISA and insist that it be followed. This could have been accomplished in the 109th Congress by passing H.R. 5371, the ''Lawful Intelligence and Surveillance of Terrorists in an Emergency by NSA'' Act, LISTEN Act, which I have cosponsored with the then ranking members of the Judiciary and Intelligence Committees, Mr. CONYERS and Ms. HARMAN.

The Bush administration has not complied with its legal obligation under the National Security Act of 1947 to keep the Intelligence Committees ''fully and currently informed'' of U.S. intelligence activities. Congress cannot continue to rely on incomplete information from the Bush administration or revelations in the media. It must conduct a full and complete inquiry into electronic surveillance in the United States and related domestic activities of the NSA, both those that occur within FISA and those that occur outside FISA.

The inquiry must not be limited to the legal questions. It must include the operational details of each program of intelligence surveillance within the United States, including: (1) who the NSA is targeting; (2) how it identifies its targets; (3) the information the program collects and disseminates; and most important; (4) whether the program advances national security interests without unduly compromising the privacy rights of the American people.

Given the unprecedented amount of information Americans now transmit electronically and the post–9/11 loosening of regulations governing information sharing, the risk of intercepting and disseminating the communications of ordinary Americans is vastly increased, requiring more precise—not looser—standards, closer oversight, new mechanisms for minimization, and limits on retention of inadvertently intercepted communications.

Mr. Speaker, the legislation before us is necessary. It is incumbent on the Congress to act expeditiously to amend existing laws so that they achieve the only legitimate goals of a terrorist surveillance program, which is to ensure that Americans are secure in their persons, papers and effects, but terrorists throughout the world are made insecure. The best way to achieve these twin goals is to follow the rule of law. And the exclusive law to follow with respect to authorizing foreign surveillance gathering on U.S. soil is the Foreign Intelligence Surveillance Act. It is my sincere hope that my colleagues will join together today in enacting important and much needed reforms to FISA.

Finally, Mr. Speaker, I am proud to support the Manager's Amendment to this legislation. This amendment clarifies that nothing in this act can be construed to prohibit lawful surveillance necessary to prevent Osama Bin Laden, al Qaeda, or any other terrorist organization from attacking the U.S., any U.S. person, or any ally of the U.S.; to ensure the safety and security of our Armed Forces or other national security or intelligence personnel; or to protect the U.S., any U.S. person, or any U.S. ally from the threat of WMD or any other threats to national security.

Mr. Speaker, even as we work to protect our Nation, we must remember the fundamental need to protect Americans. At bottom, America is its people connected to each other, and to past and future generations, as in Abraham Lincoln's unforgettable phrase, by ''the mystic chords of memory stretching from every heart and hearthstone.'' America, in other words, is Americans coming together in a community of shared values, ideals and principles. It is those shared values that hold us together. It is our commitment to those values that the terrorists wish to break because that is the only way they can win.

Thus, the way forward to victory in the war on terror is for this country to redouble its commitment to the values that every American

will risk his or her life to defend. It is only by preserving our attachment to these cherished values that America will remain forever the home of the free, the land of the brave and the country we love.

H.R. 3773 does just that. It balances the interest in protecting the Nation from terrorists who would do us harm and, at the same time, ensures that the constitutional rights of American citizens and persons in America are not abridged. I strongly urge my colleagues to join me in supporting this legislation.

Mr. LANGEVIN. Mr. Speaker, I rise in support of H.R. 3773.

Today, as we have so many times in our history, we are wrestling with the question of how best to protect security while preserving liberty. That struggle has always been challenging, and the events of 9/11 made it even more so. But today, the RESTORE Act provides a carefully crafted solution to that problem.

We all recognize the gravity of the threats facing our country, and that is why this bill gives the Director of National Intelligence all the authority he has asked for to fight terrorism. The legislation updates FISA to address new developments in technology so that our intelligence activities are not constrained based on what method of communication suspects happen to be using or where the communication may be routed. The bill also clarifies that no warrant is needed for foreign-to-foreign communications. These are requests that the DNI has made and which are included in the bill.

However, unlike the so-called Protect America Act, which passed in August, the RESTORE Act provides for rigorous and independent oversight from the courts, the Congress, and the Department of Justice Inspector General.

Additionally, during the Intelligence Committee's consideration of the bill, I successfully offered an amendment to strengthen the oversight by preserving the FISA Court's role to review compliance with their rules every 90 days for the life of a court order. By having the FISA Court review the procedures and guidelines used by the DNI and Attorney General when determining that prospective targets are located outside the U.S., we provide another safeguard against the collection of communications of people inside the U.S. Finally, the bill requires greater congressional oversight of the program so that we can monitor how it is being implemented and make any changes that may become necessary.

Such rigorous oversight is why the Bush administration objects to this bill. To them, the Protect America Act that passed in August is just fine the way it is. They want unfettered authority, without checks and balances. But we have seen what happens when the administration is given free rein, and I will not let that happen again.

I want to be clear that this is not a perfect bill. While in theory it is a vast improvement over the Protect America Act, in reality, this legislation will only work if everyone involved follows the rules that Congress establishes and remains within the confines of the law. Like any program, and indeed more so than most, this one could be subject to abuse, and we must remain vigilant in our efforts to ensure that does not happen. We have included meaningful safeguards and significant checks and balances in this measure. However, these provisions are only as strong as the individuals and agencies implementing them. Congress must continue to conduct robust oversight and insist on the briefings and information to which we are entitled. If we fail in these efforts and abuses occur, we will have ourselves to blame.

Mr. Speaker, we have faced grave threats before. Our Constitution was drafted at a time when the very survival of our Nation was in doubt. Yet our Founding Fathers made the preservation of basic liberties part of the fabric of our national identity.

As Members of Congress, it is our sworn duty to defend the Constitution and the principles on which our Nation was founded. I urge my colleagues to support H.R. 3773, which protects security while preserving the liberties that make this country great.

Mr. MAHONEY of Florida. Mr. Speaker, I rise today in support of H.R. 3773, the RESTORE Act.

On my first day, I took an oath of office to support and defend the Constitution. Tonight we will vote to protect our Fourth Amendment rights by passing this bill. Never again will we give any person the ability to conduct surveillance on American citizens without court approval.

America must be vigilant in our fight against terrorism. Congress has a duty to give our intelligence agencies the tools they need to hunt down those who threaten our Nation while protecting the constitutional rights of every American.

The RESTORE Act gives the Attorney General and the Director of National Intelligence the flexibility they need to pursue the terrorists, while keeping the checks and balances enshrined in our Constitution.

Mr. Speaker, it is critical that our intelligence community have the resources necessary to protect America. It is also critical that Americans are protected from unreasonable searches and seizures. This bill accomplishes both of these objectives.

I urge my colleagues to vote in support of the RESTORE Act.

Mr. BLUMENAUER. Mr. Speaker, as a chamber, we have come a long way since August when the disgraceful ''Protect America Act'' was strong-armed into law. The RESTORE Act, a comprehensive and thoughtful overhaul of the Foreign Intelligence Surveillance Act, could not cut a more striking contrast.

Over the past 7 years I have been highly critical of Republican wiretapping legislation. I have voted against every effort to expand the ability of this administration to intrude in the lives and privacy of innocent citizens.

But this is a Democratic Congress and a Democratic bill. The RESTORE Act strikes an unprecedented balance between civil defense and civil liberties. I deeply appreciate the hard-won progress we've made on this issue and I am heartened by our leadership's determination to end a Republican legacy that so blatantly disregards the rights of ordinary Americans.

The bill before us will not solve every potential abuse of FISA, but it does greatly strengthen legal protections for Americans and introduces robust congressional oversight. As this issue continues to play out into the future, it is my hope that our next steps will include even stronger protections for innocent Americans, clearer legal standards for FISA to judge surveillance procedures, and explicit requirements for the destruction of unnecessary data.

Ms. BEAN. Mr. Speaker, I rise today in support of H.R. 3773.

Giving our intelligence community the tools they need to uncover threats to our Nation's security is one of Congress's most important duties. This bill soundly provides that.

This legislation explicitly clarifies that a warrant is not needed when conducting foreign to foreign surveillance. Importantly this bill also includes reasonable safeguards to ensure U.S. citizens at home and abroad are not subject to surveillance without proper oversight.

It lays out a responsible yet workable framework for the Director of National Intelligence and Attorney General to get FISA certification when U.S. persons may inadvertently be involved yet allows our intelligence community to act immediately in emergency situations prior to FISA court certification.

I commend the committee for its hard work on an issue important to our national security.

While Congress should continue to pursue all relevant information from the administration's surveillance program since September 11, 2001, telecommunications providers should not be held liable for providing requested information that they were told could prevent future attacks on our Nation.

An October editorial in the Washington Post noted that these companies were ''acting as patriotic corporate citizens in a difficult and uncharted environment.''

Therefore I support retroactive immunity for participating companies and I'm hopeful it will be included in the final bill.

With that, I urge my colleagues to support H.R. 3773.

Mr. UDALL of New Mexico. Mr. Speaker, I rise today to voice my support for H.R. 3773—the Responsible Electronic Surveillance That is Overseen, Reviewed, and Effective (RESTORE) Act of 2007.

In August, Congress unfortunately passed the Protect America Act, a piece of legislation that allowed the surveillance activities of this Administration to go unchecked. Though I opposed that bill, the House was left little choice but to pass that flawed bill. While it is true that modernization of our foreign intelligence laws was necessary to meet the security and intelligence needs of this nation, the Protect America Act went beyond what was essential and instead allowed the continued infringement of American's civil liberties.

Thankfully, today we have before us a piece of legislation that gives the intelligence community the authority it needs to protect Americans while also protecting civil liberties that are the bedrock of our nation. This bill modernizes our foreign surveillance system and authorizes necessary funding for training, personnel and technology resources at DOJ, NSA and the FISA Court to expedite the FISA process. Additionally, it ensures that nothing inhibits lawful surveillance for the purpose of protecting the nation and the troops from threats posed by terrorists.

Also of great importance, unlike previous bills considered by the House, this bill includes vital checks and balances on the Administration. It prohibits warrantless surveillance of Americans and requires a court order before targeting Americans' phone calls or emails. It also requires a finding of probable cause before conducting surveillance on Americans abroad, which was not required under previous legislation. To ensure greater accountability, the legislation mandates audits on the

Administration's warrantless surveillance program and the communications collected under the program.

Most importantly, this legislation ensures that it is the courts and not the Administration that decides whether or not an American's communications are targeted. The bill requires the FISA Court to review targeting procedures to ensure that they are reasonably designed to protect Americans and target people outside the United States. It also requires the Court to review the Administration's compliance to ensure that when the government conducts electronic surveillance on Americans, it obtains traditional, individualized warrants from the FISA Court.

Mr. Speaker, for far too long this Administration has been able to extend its power and authority, often to the detriment and subversion of our nation's basic principles. Today, we are passing a bill that will finally curb the Administration's actions and restore a measure of accountability that has been sorely lacking for too long. For these reasons, I support the vitally necessary RESTORE Act.

Mr. DINGELL. Mr. Speaker, I voted against the original Patriot Act, I voted against the reauthorization of the Patriot Act in 2005, I voted against the President's Protect America Act that was signed into law last August, and I was prepared to vote against the RESTORE Act if it did not adequately protect our constitutionally guaranteed civil rights. I had strong reservations about this legislation when it was first reported out of Committee, particularly with respect to the degree it appeared to give the Administration the ability to monitor the conversations of U.S. citizens without an individualized warrant. However, after reviewing the changes made to this legislation in the managers' amendment, I am satisfied that the RESTORE Act now contains adequate Fourth Amendment protections.

I applaud Congressman HOLT for working with Chairmen CONYERS and REYES to address this issue. While this legislation is not perfect, I believe that it represents a substantial improvement over existing law. I realize it is likely we will find ourselves revisiting this issue again in the coming months when the Senate is finished with its own legislation on this matter. As this debate continues, I will continue to insist that any legislation I support contains adequate protections for civil rights.

Mr. STARK. Mr. Speaker, I rise today in support of the RESTORE Act. Unlike past national security measures, this bill will prevent the administration from violating our basic civil liberties in the name of its phony war on terror.

I appreciate the hard work of my colleagues, Chairmen CONYERS, REYES and HOLT. Thanks to their efforts, this bill is a marked improvement from the legislation President Bush requested and from the Orwellian ''Protect America Act'' the House passed in August.

Unlike the President's proposal and the legislation I voted against, the RESTORE Act will prevent domestic spying. As its name implies, this bill restores the judiciary's vital role in checking the administration's desire to conduct surveillance on whomever they want, whenever they want.

It prohibits the government from spying on Americans without the explicit approval of the FISA court. It also empowers the FISA court to determine if domestic communications picked up during blanket sweeps directed at international correspondence can be seized or searched.

Importantly, this bill does not grant immunity to telecommunications companies. The RESTORE Act will allow individuals who have had their rights violated to sue the telecommunications companies that made spying possible by sharing telephone conversations and email correspondence with the government.

The President has made it clear that he believes the three branches of government are ''me, myself, and I.'' Thankfully, this legislation dissolves him of that notion and firmly re-establishing the important and necessary role that the judiciary plays in protecting our civil liberties.

I urge my colleagues to stand up in opposition to this President and vote yes to protect our civil liberties.

Mr. GORDON of Tennessee. Mr. Speaker, I would submit the following editorial from the Los Angeles Times for the RECORD.

[From the Los Angeles Times, Nov. 15, 2007]

WHEN THE CIA COMES CALLING

(By R. James Woolsey)

When I was director of Central Intelligence during President Clinton's first term, I had occasion to go hat in hand to the private sector several times. In one case, it was a detail that, if made public, could have caused a valuable source to be captured or killed; in another, there was a technical feature of a system in production that, slightly modified, was of great help to the nation. In these several cases, executives of American companies heard me out and willingly met my requests, to the substantial benefit of our national security.

They had no legal requirement to do so, and they knew it. They were helping solely out of a sense of patriotism and an understanding that some steps that the nation needs to take in a dangerous world cannot be taken in public, simply because informing the public informs an opponent or an enemy.

Shortly after 9/11, something similar happened. Senior U.S. officials asked telecommunications companies to assist the government in intercepts involving terrorist groups such as those that had just attacked us and killed thousands of people. In these cases, President Bush authorized the intercepts and the senior officials gave written assurances to the companies that their cooperation was legal.

In my judgment, the president acted properly; he had the authority under the Constitution to ask for such intercepts. In addition, his request was reasonable because surveillance of enemy-to-American communications is a time-honored means of intelligence gathering in the U.S. George Washington did it; those under his command intercepted and read correspondence between Benedict Arnold and his spy handler, foiling the plot to turn the fort at West Point over to the British.

But even if one believes the request was illegal and unreasonable—and there are distinguished constitutional lawyers and patriotic citizens on both sides of this debate—the issue currently before the Senate Judiciary Committee is much narrower. It is whether the telecommunications companies that complied with the president's request and trusted the government's assurances of legality should be granted immunity from about 40 lawsuits demanding billions of dollars.

Sen. John D. ''Jay'' Rockefeller (D–W.Va.), chairman of the Intelligence Committee, has stated that companies ''should not be dragged through the courts for their help with national security.'' And now Sen. Dianne Feinstein (D–Calif.), a member of the Judiciary Committee, has endorsed his statement, saying that the companies should not be ''held hostage to costly litigation in what is essentially a complaint about [Bush] administration activities.''

Feinstein is a member of the one-vote Democratic majority on the Judiciary Committee, and it is possible that her position will determine the outcome. I hope it does. Her stance is farsighted. Having once, when I was practicing law, taken depositions for months about a single one-hour meeting, I know something about how burdensome litigation can be. If, in the end, the surveillance request made by the government is deemed improper, the government should be held accountable, not those who complied with its request.

We live in a world of terrorism, the possible proliferation of nuclear weapons and a host of other risks to our security. Intelligence, and the cooperation of the private sector in obtaining and protecting it, will be among our most important tools to avoid catastrophes such as 9/11 or worse.

If some future senior government official needs to make a call on a CEO of the sort I did, and that others did after 9/11, we and our children will be better off if the official can answer the question ''Can you guarantee that my company won't be sued if we help the country?'' with ''If it happens, we'll get protective legislation approved as in 2007.'' We would be in much more danger if, because companies that helped after 9/11 became ensnared in years of litigation and financial losses, that official has to answer the question with a shrug.

Mr. UDALL of Colorado. Mr. Speaker, I have reservations about this bill, but I will vote for it today.

It is similar to one that I supported earlier this year but that failed to receive the two-thids vote necessary for passage under the procedure that applied to its consideration.

In my opinion, the RESTORE Act is far preferable to the legislation—the so-called ''Protect America Act''—that I voted against but which the House, to my regret, approved and is now law.

Fortunately, that law will expire early next year, so we have the opportunity—and, I would say, the responsibility—to replace it with a better, more balanced measure.

By a more balanced measure, I mean one that fulfills two equally important requirements—first, that of enabling our intelligence community to do its job to protect us against terrorism and other threats, and second, respecting and safeguarding the rights and liberties of all Americans.

And while this bill is not perfect, I think it does meet those tests and deserves to be passed today.

It is based on the legislation I supported earlier this year but in several important ways it is even better than that bill.

For example, it is more carefully focused, applying not to all foreign intelligence but specifically to intelligence collection related to terrorism, espionage, sabotage and threats to national security. It also provides that the minimization rules—the steps agencies will take to limit their actions so as to avoid inadvertent or unnecessary surveillance—as well as the guidelines for intelligence collection regarding all targets must be approved by the FISA court, not merely by an administrative monitor.

It includes critical language that says that actions in compliance with the Foreign Intelligence Surveillance Act, and with that law's

procedural safeguards, will be the exclusive means to conduct surveillance for intelligence purposes. And the bill restates current law stipulating that surveillance targeting Americans requires an individualized FISA court order.

It takes a great step toward greater accountability by requiring an audit of past surveillance activities by the National Security Agency and by mandating record-keeping on any interception of communications by American citizens and legal residents.

The bill eliminates ambiguous language in the ''Protect America Act'' that appeared to authorize warrantless searches inside the United States, including physical searches of homes, offices, and medical records. And it makes clear that the Administration cannot conduct surveillance against Americans without probable cause—even if they are outside the United States.

Furthermore, this bill, like the one hastily passed earlier this year, is not permanent but will expire at the end of 2009, at which time Congress will be able to reconsider it with the benefit of greater knowledge of how it has worked in practice and whether further refinements should be made.

Also important is what the bill doesn't do. It does not provide constitutional protections to foreign terrorists. The bill does not require the government to obtain a FISA order in order to intercept ''foreign to foreign'' communications of suspected terrorists, even if these communications pass through the United States. Nor does this bill permit the National Security Agency to collect the communications of Americans through a ''basket'' court order. Instead, the bill requires the Administration to certify that the targets are not Americans, and if it wants to conduct surveillance on Americans, the Administration must get a formal FISA order.

And, as now amended, it includes additional language to make clear that there are other things it will not do. Specifically, it will not prevent the lawful surveillance necessary to: prevent Osama Bin Laden, al Qaeda, or any other terrorist organization from attacking our country, our people, any of our allies. It will not prevent surveillance needed to ensure the safety and security of our Armed Forces or other national security or intelligence personnel. It will not prevent surveillance needed to protect the United States, the American people, or any of our allies from the threat of weapons of mass destruction or any other threats to national security. And it will not prohibit surveillance of, or grant any rights to, undocumented aliens.

The bill does grant authority to the Director of National Intelligence and the Attorney General to apply to the FISA court for a single court order, or a ''basket'' order, authorizing surveillance of a suspected terrorist organization abroad for up to one year, as long as there are procedures in place to ensure that only foreigners are targeted and the rights of Americans are preserved.

In general, I am wary of the concept of broad scope ''basket warrants,'' which are not normal under our laws. But I am prepared to support this part of the bill on the understanding that it is limited in scope and not applicable within the United States and with the expectation that the question will be revisited if the audits indicate a need for reconsideration of this part of the legislation. In this context, I am glad to note that this legislation is not permanent and will expire at the end of 2009.

President Bush has criticized the bill, in part because it does not include a provision granting retroactive immunity for telecommunications companies that assisted in the Administration's secret surveillance program without a warrant. I think it might be appropriate to consider such a provision, but not until the Bush Administration responds to bipartisan requests for information about the past activities of these companies under the program. I am not ready to grant immunity for the companies' past activities while we don't know what activities would be covered.

Mr. Speaker, this bill is not perfect, but I am not prepared to insist on perfection at this point. I believe we must do all we can to correct the shortcomings of the ''Protect America Act,'' even if it takes Congress a number of attempts to get it right. The RESTORE Act will give the Administration the authority it says it needs to conduct surveillance on terrorist targets—while restoring many of the protections that the ''Protect America Act'' has taken away. For that reason, I will vote for this bill today.

The SPEAKER pro tempore. All time for debate has expired.

Pursuant to House Resolution 746, the previous question is ordered on the bill, as amended.

The question is on the engrossment and third reading of the bill.

The bill was ordered to be engrossed and read a third time, and was read the third time.

MOTION TO RECOMMIT OFFERED BY MR. SMITH OF TEXAS

Mr. SMITH of Texas. Mr. Speaker, I have a motion to recommit at the desk.

The SPEAKER pro tempore. Is the gentleman opposed to the bill?

Mr. SMITH of Texas. I am in its current form.

The SPEAKER pro tempore. The Clerk will report the motion to recommit.

The Clerk read as follows:

Mr. Smith of Texas moves to recommit the bill, H.R. 3773, to the Committee on the Judiciary with instructions to report the same back to the House promptly with the following amendments:

In section 18 in the heading, strike ''**ALIENS**'' and insert ''**ALIENS, STATE SPONSORS OF TERRORISM, OR AGENTS OF STATE SPONSORS OF TERRORISM**''.

In section 18, strike ''This Act and'' and insert ''(a) IN GENERAL.—This Act and''.

In section 18, strike ''United States'' and insert ''United States, a State sponsor of terrorism, or an agent of a State sponsor of terrorism''.

At the end of section 18 add the following new subsection:

(b) STATE SPONSOR OF TERRORISM DEFINED.—In this section, the term ''State sponsor of terrorism'' means a country the government of which the Secretary of State has determined, for purposes of section 6(j) of the Export Administration Act of 1979 (as continued in effect pursuant to the International Emergency Economic Powers Act) (50 U.S.C. App. 2405), section 40 of the Arms Export Control Act (22 U.S.C. 2780), section 620A of the Foreign Assistance Act of 1961 (22 U.S.C. 2371), or any other provision of law, to be a government that has repeatedly provided support for acts of international terrorism.

In paragraph (1) of the undesignated section relating to Surveillance to Protect the United States added to the bill pursuant to the adoption of House Resolution 824, insert ''members of the al-Quds Iranian Revolutionary Guard,'' after ''al Qaeda,''.

In the undesignated section relating to Surveillance to Protect the United States added to the bill pursuant to the adoption of House Resolution 824, strike ''This Act and'' and insert ''(a) This Act and''.

At the end of the undesignated section relating to Surveillance to Protect the United States added to the bill pursuant to the adoption of House Resolution 824 add the following new subsection:

(b) Notwithstanding any other provision of this Act, or the amendments made by this Act, the intelligence community (as defined in section 3(4) of the National Security Act of 1947 (50 U.S.C. 401a(4))) shall be permitted to conduct surveillance of any person concerning an imminent attack on the United States, any United States person, including a member of the United States Armed Forces, or an ally of the United States by Osama Bin Laden, Al Qaeda, members of the al-Quds Iranian Revolutionary Guard, or any other terrorist or foreign terrorist organization designated under section 219 of the Immigration and Nationality Act.

Mr. SMITH of Texas (during the reading). Mr. Speaker, I ask unanimous consent that the motion be considered as read.

The SPEAKER pro tempore. Is there objection to the request of the gentleman from Texas?

Mr. CONYERS. Mr. Speaker, I reserve a point of order, and I object to waiving the reading of the motion to recommit.

The SPEAKER pro tempore. The point of order is reserved.

The Clerk will read.

The Clerk concluded the reading of the motion.

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The SPEAKER pro tempore. Pursuant to the rule, the gentleman from Texas is recognized for 5 minutes in support of his motion.

Mr. SMITH of Texas. Mr. Speaker, the motion to recommit says ''promptly,'' because the bill needs to go back to committee immediately. Members were given almost no notice of what was going to be in this bill. There are many questions remaining about the text because it has not gone through the regular committee process.

This motion addresses a major problem created by the manager's amendment. Under existing law, court orders are required to conduct certain surveillance of illegal immigrants within the United States. Section 18 of the manager's amendment strips away any rights that illegal immigrants have under FISA, stating clearly that there will be ''no rights under the RESTORE Act for undocumented aliens.''

If that is really what the Democratic leadership wants to do, then we should ensure that the legislation does not treat terrorists more favorably than illegal immigrants. To fix this problem, the motion adds ''state sponsors of terrorism and their agents'' to section 18

to ensure that they are treated equally. There is no reason that the law should provide greater protection to terrorists than to illegal immigrants.

Also, the motion preserves the ability of our intelligence community to conduct surveillance of Osama bin Laden, al Qaeda, the Iranian Revolutionary Guard, and other terrorist organizations to protect America from an imminent terrorist attack. When faced with a life-or-death situation, a ticking bomb, an imminent threat of attack, do we really want to subject intelligence agents to unnecessary legal hurdles in order to protect our country?

The RESTORE Act hinders our intelligence community's ability to collect foreign intelligence needed to prevent al Qaeda and other terrorists from attacking our country. It requires the government to obtain court orders to conduct surveillance of overseas terrorists. The implication of this requirement, Mr. Speaker, could be catastrophic.

Mr. Speaker, I yield the balance of my time to the gentleman from Michigan (Mr. HOEKSTRA), who is the ranking member of the Intelligence Committee.

Mr. HOEKSTRA. Mr. Speaker, the new manager's amendment that self-executed with a rule this morning included broad new language that would treat illegal immigrants differently than other threats to the homeland. This was a poorly conceived and ill-advised provision that has created a lot of confusion.

Through the day, when we discussed the rule this morning, as we had the debate tonight, I had a series of questions: Would this amendment allow surveillance against possible illegal aliens for law enforcement purposes? Would it allow surveillance to determine whether someone is an alien not permitted to be in or remain in the United States?

During the rule, I was told I would get the answers during general debate. During general debate there was nothing but silence.

If we take a look at the bill, for a month we have been dealing with a bill that provided protections and legal protections to terrorists. Overseas terrorists having access to the courts, having warrants, and those types of things were moved. Then today, at the last minute, or yesterday at the last minute, we get an amendment, a manager's amendment, that provides or, it appears, rips away any type of protection for another threat.

Is the majority saying that the threat to the homeland is greater for aliens, illegal aliens living in the United States, than state sponsors of terrorism? It appears that it does because they have 40 or 50 pages of protections and a paragraph of exceptions that says: ''No rights under the RESTORE Act for undocumented aliens.'' Many on our side may think that that is a good idea.

What this manager's amendment says very simply is if there are no rights under the RESTORE Act for undocumented aliens, maybe we should put that same provision in here for state sponsors of terrorism and agents of sponsors of terrorism. It's very clear. We think that if a threat to the homeland, as identified by the other side, are illegal aliens, perhaps it's also time that we recognize that state sponsors of terrorism pose the same type of threat to the United States.

Is the majority saying that illegal aliens are a greater threat to the United States than Cuba, than Iran, North Korea, Sudan and Syria? It appears from the bill that we have before us tonight that is exactly what they are saying, because they have 50 pages of protections and one page of exceptions.

Let's make sure that we treat illegal aliens the same way we treat North Korea and Cuba.

The SPEAKER pro tempore. Does the gentleman from Michigan continue to maintain his reservation?

Mr. CONYERS. Mr. Speaker, I do not insist upon my point of order.

The SPEAKER pro tempore. The reservation is withdrawn.

Mr. CONYERS. Mr. Speaker, I rise to respond to the motion to recommit.

The SPEAKER pro tempore. Is the gentleman opposed to the motion to recommit?

Mr. CONYERS. Mr. Speaker, I am.

The SPEAKER pro tempore. The gentleman from Michigan is recognized for 5 minutes.

Mr. CONYERS. Mr. Speaker, ladies and gentlemen of the House, here we are again at another one of these so-called motions to recommit. Approach them with great care. I strongly oppose this motion.

The minority has just made it clear that they are not seeking to change the bill; they are seeking to kill the bill. The tactic is getting pretty old in the House of Representatives. If they wanted to vote on their proposal today, they would have used the word, doesn't everybody know it now, ''forthwith,'' as I have suggested. But they have refused under well-established House rules and precedents.

Other words do not have that effect, even if they sound like they should. The minority used the word ''promptly.'' It's no accident that they chose that word. The authors of this motion know full well the effect of choosing this word, and so do we. That is why they chose it. They wanted to send the bill back to the graveyard, which is what will happen if this motion is adopted.

I would now yield to the gentlewoman from California (Ms. ZOE LOFGREN).

Ms. ZOE LOFGREN of California. Mr. Speaker, I would note that the motion to recommit itself leads to a nonsense sentence, adding ''United States, a State sponsor of terrorism,'' to section 18. It's inexplicable nonsense. It also guts the bill.

On August 2, I rushed to the floor to say that we were passing a bill that was a terrible offense to the Constitution. It gutted the fourth amendment. This bill does not. Mr. Speaker, I urge its passage.

Mr. CONYERS. Mr. Speaker, I am proud to yield to the distinguished chairman of the Intelligence Committee, the gentleman from Texas (Mr. REYES).

Mr. REYES. I thank the gentleman for yielding.

Mr. Speaker, this is a sham solution in search of a problem. This language is unnecessary, and it would kill this bill. The bill already states that this act and the amendments made by this act shall not be construed to prohibit the intelligence community from conducting lawful surveillance that is necessary, one, to prevent Osama bin Laden, al Qaeda, or any other terrorist or terrorist organization from attacking the United States. It also provides the means to protect the United States, any United States person or any ally of the United States from threats posed by weapons of mass destruction or other threats of national security.

Mr. Speaker, the answer to the ranking member's question about undocumented aliens, all they have to do is check section 235 and 287 of the Immigration and Naturalization Act. This does not confer any additional rights not provided by the Constitution.

Mr. CONYERS. I thank the chairman.

I am really moved by the sudden concern for immigration rights that the other side has begun to display, to my surprise.

I yield now to the gentlewoman from California (Ms. HARMAN).

Ms. HARMAN. I thank the gentleman for yielding. I think this has been an interesting debate. I have sat through every minute of it. During the debate on the rule, I spoke for this bill and for the rule; and now I speak strongly against this motion to recommit. As you have already heard, it is redundant. We have inserted language in this bill that takes care of the problem. In the manager's amendment, language was added at the request of the Blue Dogs, and I am proud to be a co-chair of the Blue Dog Coalition, and that language specifically refers to terrorist organizations, and the Revolutionary Guards are one such organization.

So I would like to say for two reasons there's no need to support this motion to recommit: one, it kills the bill by using the word ''promptly''; number two, it is redundant with excellent language that we added to the bill in the manager's amendment. As I have said before, this is not a zero sum game. We don't get more security and less liberty or more liberty and less security. We either get more of both or less of both.

These amendments carefully restore, it's called the RESTORE Act, the balance of the Foreign Intelligence Surveillance Act, which Congress wisely

passed 20 years ago. Vote for this bill and against the motion to recommit. We will restore that balance.

PARLIAMENTARY INQUIRIES

Mr. WESTMORELAND. Mr. Speaker, I have a parliamentary inquiry.

The SPEAKER pro tempore. The gentleman will state it.

Mr. WESTMORELAND. Mr. Speaker, is it not true that if indeed this motion passed, this bill could be reported back to the two respective committees to which it is designated and that the bill could be reported back to the House on the next legislative day?

The SPEAKER pro tempore. As the Chair reaffirmed on October 10, 2007, the adoption of a motion to recommit with instructions to report back promptly sends the bill to committee, whose eventual report, if any, would not be immediately before the House. Unlike the case of a motion to recommit with instructions to report back forthwith, a motion to recommit with ''non-forthwith'' instructions does not operate in real time. As the Chair put it on May 24, 2000: ''At some subsequent time the committee could meet and report the bill back to the House.''

Mr. FRANK of Massachusetts. Mr. Speaker, parliamentary inquiry.

The SPEAKER pro tempore. The gentleman will state it.

Mr. FRANK of Massachusetts. Mr. Speaker, would adoption of the motion to recommit promptly have the effect of suspending any of the committee or House rules which require certain numbers of days before action can be taken?

The SPEAKER pro tempore. Although the Chair does not interpret the substance of a pending proposition, the Chair can make an observation about its procedural attributes. Thus, the Chair will observe that an order of recommital does not necessarily forestall the operation of a committee rule otherwise applicable to further proceedings.

Mr. WESTMORELAND. Mr. Speaker, further parliamentary inquiry. Is it not true that different committees have different rules and that some committees have emergency rules where these bills can be brought back to the floor as early as the next legislative day?

The SPEAKER pro tempore. The Chair cannot say what in the rules of a committee might constrain the timing of any action it might take. Neither can the Chair render an advisory opinion whether points of order available under the rules of the House might preclude further proceedings on the floor.

Without objection, the previous question is ordered on the motion to recommit.

There was no objection.

The SPEAKER pro tempore. The question is on the motion to recommit.

The question was taken; and the Speaker pro tempore announced that the noes appeared to have it.

Mr. SMITH of Texas. Mr. Speaker, on that I demand the yeas and nays.

The yeas and nays were ordered.

The SPEAKER pro tempore. Pursuant to clause 8 and clause 9 of rule XX, this 15-minute vote on the motion to recommit will be followed by 5-minute votes on passage of H.R. 3773, if ordered; and motion to suspend the rules on H.R. 4136.

The vote was taken by electronic device, and there were—yeas 194, nays 222, not voting 16, as follows:

[Roll No. 1119]

YEAS—194

Aderholt	Foxx	Musgrave
Akin	Franks (AZ)	Myrick
Alexander	Frelinghuysen	Neugebauer
Bachmann	Gallegly	Pearce
Bachus	Garrett (NJ)	Pence
Baker	Gerlach	Peterson (PA)
Barrett (SC)	Gilchrest	Pickering
Barrow	Gingrey	Pitts
Bartlett (MD)	Gohmert	Platts
Barton (TX)	Goode	Poe
Bean	Goodlatte	Porter
Biggert	Granger	Price (GA)
Bilbray	Graves	Pryce (OH)
Bilirakis	Hall (TX)	Putnam
Bishop (UT)	Hastert	Radanovich
Blackburn	Hastings (WA)	Ramstad
Blunt	Hayes	Regula
Boehner	Heller	Rehberg
Bonner	Hensarling	Reichert
Boozman	Herger	Renzi
Boustany	Hobson	Reynolds
Brady (TX)	Hoekstra	Rogers (AL)
Broun (GA)	Hulshof	Rogers (KY)
Brown (SC)	Hunter	Rogers (MI)
Brown-Waite, Ginny	Inglis (SC)	Rohrabacher
Buchanan	Issa	Ros-Lehtinen
Burgess	Johnson (IL)	Roskam
Burton (IN)	Johnson, Sam	Royce
Buyer	Jones (NC)	Ryan (WI)
Calvert	Jordan	Sali
Camp (MI)	Keller	Saxton
Campbell (CA)	King (IA)	Schmidt
Cannon	King (NY)	Sensenbrenner
Cantor	Kingston	Sessions
Capito	Kirk	Shadegg
Carter	Kline (MN)	Shays
Castle	Knollenberg	Shimkus
Chabot	Kuhl (NY)	Shuster
Coble	Lamborn	Simpson
Cole (OK)	Lampson	Smith (NE)
Conaway	Latham	Smith (NJ)
Crenshaw	LaTourette	Smith (TX)
Culberson	Lewis (CA)	Souder
Davis (KY)	Lewis (KY)	Stearns
Davis, David	Linder	Sullivan
Davis, Tom	LoBiondo	Tancredo
Deal (GA)	Lucas	Terry
Dent	Lungren, Daniel E.	Thornberry
Diaz-Balart, L.	Manzullo	Tiahrt
Diaz-Balart, M.	Marchant	Tiberi
Donnelly	McCarthy (CA)	Turner
Doolittle	McCotter	Upton
Drake	McCrery	Walberg
Dreier	McHenry	Walden (OR)
Duncan	McHugh	Walsh (NY)
Ehlers	McKeon	Wamp
Ellsworth	McMorris Rodgers	Weldon (FL)
Emerson	McNerney	Westmoreland
English (PA)	Mica	Whitfield
Fallin	Miller (FL)	Wicker
Feeney	Miller (MI)	Wilson (NM)
Ferguson	Miller, Gary	Wilson (SC)
Forbes	Moran (KS)	Wolf
Fortenberry	Murphy, Tim	Young (AK)
Fossella		Young (FL)

NAYS—222

Abercrombie	Blumenauer	Castor
Ackerman	Boren	Chandler
Allen	Boswell	Clarke
Altmire	Boucher	Clay
Andrews	Boyd (FL)	Cleaver
Arcuri	Boyda (KS)	Clyburn
Baca	Brady (PA)	Cohen
Baird	Braley (IA)	Conyers
Baldwin	Brown, Corrine	Cooper
Becerra	Butterfield	Costa
Berkley	Capps	Costello
Berman	Capuano	Courtney
Berry	Cardoza	Cramer
Bishop (GA)	Carnahan	Crowley
Bishop (NY)	Carney	Cuellar
Cummings	Kildee	Richardson
Davis (AL)	Kilpatrick	Rodriguez
Davis (CA)	Kind	Ross
Davis (IL)	Klein (FL)	Rothman
Davis, Lincoln	Langevin	Roybal-Allard
DeFazio	Lantos	Ruppersberger
DeGette	Larsen (WA)	Rush
Delahunt	Larson (CT)	Ryan (OH)
DeLauro	Lee	Salazar
Dicks	Levin	Sánchez, Linda T.
Dingell	Lewis (GA)	
Doggett	Lipinski	Sanchez, Loretta
Edwards	Loebsack	Sarbanes
Ellison	Lofgren, Zoe	Schakowsky
Emanuel	Lowey	Schiff
Engel	Lynch	Schwartz
Eshoo	Mahoney (FL)	Scott (GA)
Etheridge	Maloney (NY)	Scott (VA)
Farr	Markey	Serrano
Fattah	Marshall	Sestak
Filner	Matheson	Shea-Porter
Flake	Matsui	Sherman
Frank (MA)	McCarthy (NY)	Shuler
Giffords	McCollum (MN)	Sires
Gillibrand	McDermott	Skelton
Gonzalez	McGovern	Smith (WA)
Gordon	McIntyre	Snyder
Green, Al	McNulty	Solis
Green, Gene	Meek (FL)	Space
Grijalva	Meeks (NY)	Spratt
Gutierrez	Melancon	Stark
Hall (NY)	Michaud	Stupak
Hare	Miller (NC)	Sutton
Harman	Miller, George	Tanner
Hastings (FL)	Mitchell	Tauscher
Herseth Sandlin	Mollohan	Thompson (CA)
Higgins	Moore (KS)	Thompson (MS)
Hill	Moore (WI)	Tierney
Hinchey	Moran (VA)	Towns
Hinojosa	Murphy (CT)	Tsongas
Hirono	Murphy, Patrick	Udall (CO)
Hodes	Murtha	Udall (NM)
Holden	Nadler	Van Hollen
Holt	Napolitano	Velázquez
Honda	Neal (MA)	Visclosky
Hooley	Obey	Walz (MN)
Hoyer	Olver	Wasserman Schultz
Inslee	Ortiz	
Israel	Pallone	Waters
Jackson (IL)	Pascrell	Watson
Jackson-Lee (TX)	Pastor	Watt
	Payne	Waxman
Jefferson	Perlmutter	Weiner
Johnson (GA)	Peterson (MN)	Welch (VT)
Johnson, E. B.	Petri	Wexler
Jones (OH)	Pomeroy	Wilson (OH)
Kagen	Price (NC)	Woolsey
Kanjorski	Rahall	Wu
Kaptur	Rangel	Wynn
Kennedy	Reyes	Yarmuth

NOT VOTING—16

Bono	Kucinich	Paul
Carson	LaHood	Slaughter
Cubin	Mack	Taylor
Doyle	McCaul (TX)	Weller
Everett	Nunes	
Jindal	Oberstar	

ANNOUNCEMENT BY THE SPEAKER PRO TEMPORE

The SPEAKER pro tempore (during the vote). Two minutes remain in the vote.

□ 2048

Messrs. ELLISON and OLVER changed their vote from ''yea'' to ''nay.''

Messrs. CRENSHAW, JOHNSON of Illinois and MCHENRY changed their vote from ''nay'' to ''yea.''

So the motion to recommit was rejected.

The result of the vote was announced as above recorded.

Stated against:

Ms. SLAUGHTER. Mr. Speaker, on rollcall No. 1119, had I been present, I would have voted "nay."

The SPEAKER pro tempore. The question is on the passage of the bill.

The question was taken; and the Speaker pro tempore announced that the ayes appeared to have it.

RECORDED VOTE

Mr. CONYERS. Mr. Speaker, I demand a recorded vote.

A recorded vote was ordered.

The SPEAKER pro tempore. This will be a 5-minute vote.

The vote was taken by electronic device, and there were—ayes 227, noes 189, not voting 16, as follows:

[Roll No. 1120]

AYES—227

Abercrombie
Ackerman
Allen
Altmire
Andrews
Arcuri
Baca
Baird
Baldwin
Bean
Becerra
Berkley
Berman
Berry
Bishop (GA)
Bishop (NY)
Blumenauer
Boren
Boswell
Boucher
Boyd (FL)
Boyda (KS)
Brady (PA)
Braley (IA)
Brown, Corrine
Butterfield
Capps
Cardoza
Carnahan
Carney
Castor
Chandler
Clarke
Clay
Cleaver
Clyburn
Cohen
Conyers
Cooper
Costa
Costello
Courtney
Cramer
Crowley
Cuellar
Cummings
Davis (AL)
Davis (CA)
Davis (IL)
Davis, Lincoln
DeFazio
DeGette
Delahunt
DeLauro
Dicks
Dingell
Doggett
Donnelly
Duncan
Edwards
Ellison
Ellsworth
Emanuel
Engel
Eshoo
Etheridge
Farr
Fattah
Filner
Flake
Frank (MA)
Giffords
Gilchrest
Gillibrand
Gonzalez
Gordon
Green, Al
Green, Gene
Grijalva
Gutierrez
Hall (NY)
Hare
Harman
Hastings (FL)
Herseth Sandlin
Hill
Hinchey
Hinojosa
Hirono
Hodes
Holden
Holt
Honda
Hooley
Hoyer
Inglis (SC)
Inslee
Israel
Jackson (IL)
Jackson-Lee (TX)
Jefferson
Johnson (GA)
Johnson, E. B.
Jones (NC)
Jones (OH)
Kagen
Kanjorski
Kaptur
Kennedy
Kildee
Kilpatrick
Kind
Klein (FL)
Langevin
Lantos
Larsen (WA)
Larson (CT)
Lee
Levin
Lewis (GA)
Lipinski
Loebsack
Lofgren, Zoe
Lowey
Lynch
Mahoney (FL)
Maloney (NY)
Markey
Marshall
Matheson
Matsui
McCarthy (NY)
McCollum (MN)
McDermott
McGovern
McIntyre
McNerney
McNulty
Meek (FL)
Meeks (NY)
Melancon
Miller (NC)
Miller, George
Mitchell
Mollohan
Moore (KS)
Moore (WI)
Moran (VA)
Murphy (CT)
Murphy, Patrick
Murtha
Nadler
Napolitano
Neal (MA)
Obey
Olver
Ortiz
Pallone
Pascrell
Pastor
Payne
Perlmutter
Peterson (MN)
Pomeroy
Price (NC)
Rahall
Rangel
Reyes
Richardson
Rodriguez
Ross
Rothman
Roybal-Allard
Ruppersberger
Rush
Ryan (OH)
Salazar
Sánchez, Linda T.
Sanchez, Loretta
Sarbanes
Schakowsky
Schiff
Schwartz
Scott (GA)
Scott (VA)
Sestak
Shea-Porter
Sherman
Shuler
Sires
Skelton
Slaughter
Smith (WA)
Snyder
Solis
Space
Spratt
Stark
Stupak
Sutton
Tanner
Tauscher
Taylor
Thompson (CA)
Thompson (MS)
Tierney
Towns
Tsongas
Udall (CO)
Udall (NM)
Van Hollen
Velázquez
Visclosky
Walz (MN)
Wasserman Schultz
Waters
Watson
Watt
Waxman
Weiner
Welch (VT)
Wexler
Wilson (OH)
Woolsey
Wu
Wynn
Yarmuth

NOES—189

Aderholt
Akin
Alexander
Bachmann
Bachus
Baker
Barrett (SC)
Barrow
Bartlett (MD)
Barton (TX)
Biggert
Bilbray
Bilirakis
Bishop (UT)
Blackburn
Blunt
Boehner
Bonner
Boozman
Boustany
Brady (TX)
Broun (GA)
Brown (SC)
Brown-Waite, Ginny
Buchanan
Burgess
Burton (IN)
Buyer
Calvert
Camp (MI)
Campbell (CA)
Cannon
Cantor
Capito
Capuano
Carter
Castle
Chabot
Coble
Cole (OK)
Conaway
Crenshaw
Culberson
Davis (KY)
Davis, David
Davis, Tom
Dent
Diaz-Balart, L.
Diaz-Balart, M.
Doolittle
Drake
Dreier
Ehlers
Emerson
English (PA)
Fallin
Feeney
Ferguson
Forbes
Fortenberry
Fossella
Foxx
Franks (AZ)
Frelinghuysen
Gallegly
Garrett (NJ)
Gerlach
Gingrey
Gohmert
Goode
Goodlatte
Granger
Graves
Hall (TX)
Hastert
Hastings (WA)
Heller
Hensarling
Herger
Hobson
Hoekstra
Hulshof
Issa
Johnson (IL)
Johnson, Sam
Jordan
Keller
King (IA)
King (NY)
Kingston
Kirk
Kline (MN)
Knollenberg
Kuhl (NY)
Lamborn
Lampson
Latham
LaTourette
Lewis (CA)
Lewis (KY)
Linder
LoBiondo
Lucas
Lungren, Daniel E.
Manzullo
Marchant
McCarthy (CA)
McCaul (TX)
McCotter
McCrery
McHenry
McHugh
McKeon
McMorris Rodgers
Mica
Michaud
Miller (FL)
Miller (MI)
Miller, Gary
Moran (KS)
Murphy, Tim
Musgrave
Myrick
Neugebauer
Nunes
Pearce
Pence
Peterson (PA)
Petri
Pickering
Pitts
Platts
Poe
Porter
Price (GA)
Pryce (OH)
Putnam
Radanovich
Ramstad
Regula
Rehberg
Reichert
Renzi
Reynolds
Rogers (AL)
Rogers (KY)
Rogers (MI)
Rohrabacher
Ros-Lehtinen
Roskam
Royce
Ryan (WI)
Sali
Saxton
Schmidt
Sensenbrenner
Serrano
Sessions
Shadegg
Shays
Shimkus
Shuster
Simpson
Smith (NE)
Smith (NJ)
Smith (TX)
Souder
Stearns
Sullivan
Tancredo
Terry
Thornberry
Tiahrt
Tiberi
Turner
Upton
Walberg
Walden (OR)
Walsh (NY)
Wamp
Weldon (FL)
Westmoreland
Whitfield
Wicker
Wilson (NM)
Wilson (SC)
Wolf
Young (AK)
Young (FL)

NOT VOTING—16

Bono
Carson
Cubin
Deal (GA)
Doyle
Everett
Hayes
Higgins
Hunter
Jindal
Kucinich
LaHood
Mack
Oberstar
Paul
Weller

ANNOUNCEMENT BY THE SPEAKER PRO TEMPORE

The SPEAKER pro tempore (during the vote). Two minutes remain on this vote.

□ 2055

So the bill was passed.

The result of the vote was announced as above recorded.

A motion to reconsider was laid on the table.

Stated for:

Mr. HIGGINS. Mr. Speaker, on rollcall No. 1120, I was unavoidably detained and missed the vote on bill H.R. 3773, the Restore Act. Had I been present, I would have voted "aye" on passage.

Stated against:

Mr. HAYES. Mr. Speaker, on rollcall No. 1120, had I been present, I would have voted "no."

FURTHER MESSAGE FROM THE SENATE

A further message from the Senate by Ms. Curtis, one of its clerks, announced that the Senate has agreed to without amendment a concurrent resolution of the House of the following title:

H. Con. Res. 259. Concurrent resolution providing for a conditional adjournment of the House of Representatives and a conditional recess or adjournment of the Senate.

The message also announced that the Senate has passed a bill of the following title in which the concurrence of the House it requested:

S. 2371. An act to amend the Higher Education Act of 1965 to make technical corrections.

ENHANCING THE EFFECTIVE PROSECUTION OF CHILD PORNOGRAPHY ACT OF 2007

The SPEAKER pro tempore. The unfinished business is the vote on the motion to suspend the rules and pass the bill, H.R. 4136, as amended, on which the yeas and nays were ordered.

The Clerk read the title of the bill.

The SPEAKER pro tempore. The question is on the motion offered by the gentleman from Michigan (Mr. CONYERS) that the House suspend the rules and pass the bill, H.R. 4136, as amended.

This will be a 5-minute vote.

The vote was taken by electronic device, and there were—yeas 416, nays 0, not voting 16, as follows:

[Roll No. 1121]

YEAS—416

Abercrombie
Ackerman
Aderholt
Akin
Alexander
Allen
Altmire
Andrews
Arcuri
Baca
Bachmann
Bachus
Baird
Baker
Baldwin
Barrett (SC)
Barrow
Bartlett (MD)
Barton (TX)
Becerra
Berkley
Berman
Berry
Biggert
Bilbray
Bilirakis
Bishop (GA)
Bishop (NY)
Bishop (UT)
Blackburn
Blumenauer
Blunt
Boehner
Bonner
Boozman
Boren
Boswell
Boucher
Boustany
Boyd (FL)
Boyda (KS)
Brady (PA)
Brady (TX)
Braley (IA)
Broun (GA)
Brown (SC)
Brown, Corrine
Brown-Waite, Ginny
Buchanan
Burgess
Burton (IN)
Butterfield
Buyer
Calvert
Camp (MI)
Campbell (CA)
Cannon
Cantor
Capito
Capps
Capuano
Cardoza
Carnahan
Carney
Carter
Castle
Castor
Chabot
Chandler
Clarke
Clay
Cleaver
Clyburn
Coble
Cohen
Cole (OK)
Conaway
Conyers
Cooper
Costa
Costello
Courtney
Cramer
Crenshaw
Crowley
Cuellar
Culberson
Cummings
Davis (AL)
Davis (CA)
Davis (IL)
Davis (KY)
Davis, David
Davis, Lincoln
Davis, Tom
Deal (GA)
DeFazio
DeGette
Delahunt
DeLauro
Dent
Diaz-Balart, L.
Diaz-Balart, M.
Dicks
Dingell
Doggett
Donnelly
Doolittle
Drake
Dreier
Duncan
Edwards
Ehlers
Ellison
Ellsworth
Emanuel
Emerson
Engel
English (PA)
Eshoo
Etheridge
Fallin
Farr
Fattah
Feeney
Ferguson
Filner
Flake
Forbes
Fortenberry
Fossella