

forward measure which we can pass today.

This bill will put the tools back in the hands of the people who work tirelessly in providing a safe environment for American families throughout this great country.

This amendment of FISA simply returns the law to its original intent, which is twofold: first, allowing surveillance of foreign targets, who were never underprotected under FISA; and second, guaranteeing the privacy and rights of U.S. persons, who remain protected.

It is time to address this situation. I would ask my colleagues to join me in pledging to pass legislation in this area before we recess. This is not about partisan politics.

This is about protecting Americans. We are all painfully aware of the continued dangers that our country continues to face at the hands of organized groups and dedicated individuals who desire nothing more than the collapse of our country as a superpower.

This is not a case of the boy who cried wolf. We know the threats are out there. However, each day that passes creates emotional distance between the nightmares of September 11, and each new day provides opportunities to heal.

We don't have to live our lives in fear, but we have to acknowledge that the world changed that day. Rather than obsessing over news reports, let's enjoy the tremendous opportunities that the greatest Nation on Earth provides.

And let's ensure that all of the dedicated and noble professionals who play a part in ensuring our liberty and safety are not hampered by nonpartisan problems that we have the ability to fix.

We always hear that the terrorists have an asymmetrical advantage over us: They do not operate as nation-states, and some of them are willing to die as suicide bombers.

But we have a massive asymmetrical advantage over them: Our technological prowess.

Are we to compromise one of our greatest strengths, when that strength is essential, effective and lawful?

I remind my colleagues that even though we will return to our States for the recess, our enemies and their threats don't go away. They don't adjust their schedules to fit ours.

Make no mistake, inaction on our part needlessly subjects every American to increased danger. We need to act.

We have two options: Cut into August recess if necessary to provide safety to Americans, or go home and leave this vulnerability intact.

The answer is an easy one: Let's ensure that our defenders have all of the tools they need for our continued safety, no matter how long it takes.

I urge my colleagues to join me in pledging to pass FISA modernization legislation before our recess. I yield the floor.

THE PRESIDING OFFICER. The Senator from Alaska is recognized.

(The remarks of Mr. STEVENS pertaining to the introduction of S.J. Res. 17 are located in today's RECORD under "Statements on Introduced Bills and Joint Resolutions.")

RECESS SUBJECT TO THE CALL OF THE CHAIR

Mr. STEVENS. Mr. President, I ask unanimous consent that the Senate stand in recess subject to the call of the Chair.

There being no objection, at 11:33 a.m., the Senate recessed subject to the call of the Chair and reassembled at 8:08 p.m., when called to order by the Presiding Officer (Mr. TESTER).

THE PRESIDING OFFICER. The majority leader is recognized.

THANKING THE PRESIDING OFFICER

Mr. REID. Mr. President, first of all, I express my appreciation to you, the Presiding Officer. You have been very patient all day, as have all the Members but you especially, having to be on standby and calling us back into session. I appreciate that very much.

PROTECT AMERICA ACT OF 2007

Mr. REID. Mr. President, I ask unanimous consent that the Senate now proceed to debate concurrently S. 2011, now at the desk, and S. 1927, as amended with the changes now at the desk; that there be 60 minutes of debate equally divided between the two leaders or their designees; that no amendments or motions be in order with respect to either bill; that at the conclusion or yielding back of time, the bills each be read a third time and the Senate vote on passage of S. 1927, as amended, to be followed by a vote on passage of S. 2011; that if either bill fails to achieve 60 votes, then the vote on passage be vitiated and the bill be placed on the calendar in the case of S. 2011 or returned to the calendar in the case of S. 1927, as amended.

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

The clerk will report.

The legislative clerk read as follows:

A bill (S. 2011) cited as the "Protect America Act of 2007".

A bill (S. 1929) to amend the Foreign Intelligence Surveillance Act of 1978 to provide additional procedures for authorizing certain acquisitions of foreign intelligence information and for other purposes.

The amendment (No. 2649) to S. 1927 is as follows:

(Purpose: To provide a sunset provision)

At the end, add the following:

(c) SUNSET.—Except as provided in subsection (d), sections 2, 3, 4, and 5 of this Act, and the amendments made by this Act, shall cease to have effect 180 days after the date of the enactment of this Act.

(d) AUTHORIZATIONS IN EFFECT.—Authorizations for the acquisition of foreign intelligence information pursuant to the amendments made by this Act, and directives issued pursuant to such authorizations, shall remain in effect until their expiration. Such

acquisitions shall be governed by the applicable provisions of such amendments and shall not be deemed to constitute electronic surveillance as that term is defined in section 101(f) of the Foreign Intelligence Surveillance Act of 1978 (50 U.S.C. 1801(f)).

Mr. REID. Mr. President, I ask on our time that Senator ROCKEFELLER be given 10 minutes.

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

The Senator from West Virginia.

Mr. ROCKEFELLER. Mr. President, I thank the distinguished majority leader and the distinguished Presiding Officer.

Mr. President, the Rockefeller-Levin bill before the Senate will provide the Director of National Intelligence, Mike McConnell, the temporary authorities he needs to expand his ability to collect time-sensitive intelligence against foreign targets as the Congress continues to work on a more lasting effort to reform the Foreign Intelligence Surveillance Act, or FISA, after 6 months has passed.

I wish to make this very clear. The Rockefeller-Levin bill is the bill of the Director of National Intelligence, who was appointed by the President to be in charge and make all decisions with respect to this matter. In the statement DNI McConnell put out at 4:39 this evening, he said:

I urge Members of Congress to support the legislation I provided last evening to modify FISA and equip our intelligence community with the tools we need to protect our Nation.

Mr. President, I ask unanimous consent to have printed in the RECORD the DNI's full statement at the conclusion of my remarks.

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

(See exhibit 1.)

Mr. ROCKEFELLER. He is talking about our bill, the bill I am now talking about. The Rockefeller-Levin bill is the bill the DNI is referring to in his statement. I am not shy about saying that; I am proud of it. The bill he provided to us last evening—that is our bill, not the other one, our bill—is not the Bond bill that was filed 2 days ago. It is our bill.

Our bill takes the DNI's preferred bill and modifies it in a limited number of ways to make it stronger without in any way diminishing the fundamental intelligence authorities the DNI needs. Our bill includes a sunset provision of 6 months, the same sunset provision or period that is contained in the Bond bill, I might add, and we are told that the DNI accepted. In fact, he has told us specifically he accepts it.

Our modified DNI bill—Director of National Intelligence—would allow our intelligence community to begin the surveillance of terrorist suspects, targets located overseas, immediately upon the signing of the bill, even if those targeted calls enter the United States. In other words, you start immediately in the collection. Why is this? Because the collection is not complete. We are not going in all

places we should be, and that is the national requirement because of various warnings that have been issued. So there is no delay—immediate collection—provided there has been a determination by the Attorney General and the DNI that the target is foreign.

The only requirement in this bill on the collection is the requirement that the Foreign Intelligence Surveillance Court must be presented, for its review and approval, the Attorney General's guidelines on how the determination is to be made that targets of surveillance are overseas. So the Foreign Surveillance Intelligence Court remains very much a part of our bill, the bill the DNI prefers. This process of court review and authorization of procedures—not individual targeting determinations but a straightforward review that the procedures are reasonable—is at the heart of both the DNI's bill and ours.

While the DNI proposal of last night sets forth a 90-day period during which this intelligence collection can take place before the court needs to issue another authorizing of the collection, our bill modifies the time involved in this process—we thought that was too long—which we believe will be relatively straightforward and non-controversial, so that the application, including the guidelines, is submitted to the FISA Court within 10 days after surveillance begins and that the court must act within 30 days, which the court could then extend if additional time is, in fact, needed.

All during this 30-day period of application submission and court review, the collection against foreign targets continues. I keep making that point because it was very hard for people to come to terms with that. This is not case-by-case review. Methods are established, authority is given, and collections can continue.

Moreover, once the court approves the guidelines, the Attorney General is not required to return to the court for further approval for the remainder of the 6-month period of this legislation.

This process provides minimal and yet essential oversight while not inhibiting or delaying the intelligence collection from proceeding. The Rockefeller-Levin bill accepts the DNI-requested authority to proceed during this FISA Court review.

The Bond bill, on the other hand—and I greatly respect and have strong affection for my vice chairman, but we have competing bills, and let the difference be known. The Bond bill, on the other hand, provides a weak and practically nonexistent court review of the procedures for how to determine that a target is foreign and not American. The Bond bill would not require the Attorney General to submit the application and guidelines in the FISA Court until 4 months into the 6-month life of the bill, and then the Bond bill would not require court approval until 6 months has gone by.

In other words, under the Bond bill, court approval of these simple and

straightforward guidelines on how the Attorney General would determine whether a target is indeed foreign, guidelines that DNI has told me personally exist already—let me repeat, guidelines that he has said exist already—the guidelines that would have to exist before collection could begin in the first place for the surveillance to be legal under the Bond bill.

These guidelines would not have to be submitted until 4 months into the 6-month life of the bill and would not have to be approved by the court until the last day that the law would be in effect.

Is that meaningful court review over what is a straightforward matter of court review and can easily be handled within 30 days? It is, of course, not, and is, frankly, a farce.

The Rockefeller-Levin modified DNI bill makes sure the Attorney General has guidelines in place to address the concerns of many, including our intelligence officials, that surveillance of foreign targets not inadvertently result in the reverse targeting of Americans and their communications based on innocent communications swept up between Americans and individuals overseas. Our modified DNI bill also states right up front that a court order is not required for the surveillance of foreign-to-foreign communications, even if the interception of the communication occurs in the United States.

The DNI and others have made a huge point about keeping the surveillance of foreign-to-foreign communications outside the FISA process, and I agree. The Rockefeller-Bond bill made clear that this is the case.

I could spend additional time explaining why the Bond bill falls short of the bill that the DNI asked us to pass, in public, earlier this evening. I could spend additional time explaining the merits and protections contained in our bill. But time has run out.

Before us now is a very simple question, and I say this with some heat: Will the Senate pass a bill that the DNI wants, a bill that gives him the collection tool he needs for the next 6 months, and then we review the whole process again, a bill which both Republicans and Democrats can support and can rally around, to clearly demonstrate that we put national security above politics and that we are ready to break with the partisan gridlock of the past and produce results, results which give all Americans some comfort that we have our priorities straight? And we do.

I urge my colleagues to support the Rockefeller-Levin modified DNI bill, and I close, with some lack of subtlety, with the words of the DNI earlier this day:

I urge Members of Congress to support legislation I provided last evening to modified FISA and equip our intelligence community with the tools we need to protect our Nation.

That is our bill; not their bill—our bill. Passage of the Rockefeller-Levin bill—not the Bond amendment, our

bill—would give the DNI the tools he needs with the necessary court review and oversight as we continue over the next 6 months on more legislation to reform FISA.

EXHIBIT 1

DIRECTOR OF NATIONAL INTELLIGENCE,
Washington, DC, August 2, 2007.
STATEMENT BY DIRECTOR OF NATIONAL
INTELLIGENCE

Subject: Modernization of the Foreign Intelligence Surveillance Act (FISA)

I greatly appreciate the significant time many Members of the Senate and the House of Representatives have taken to discuss with me the urgent need to modernize FISA. I also appreciate the bipartisan support for ensuring the Intelligence Community can effectively collect the necessary intelligence to protect our country from attack. In view of the significance of this issue, its impact on the Intelligence Community's ability to be effective and the continuing dialogue to come to closure on an effective bill, it is important for me to discuss the essential provisions needed by the Intelligence Community.

We must urgently close the gap in our current ability to effectively collect foreign intelligence. The current FISA law does not allow us to be effective. Modernizing this law is essential for the Intelligence Community to be able to provide warning of threats to the country.

CRITICAL CHANGES NEEDED

First, the Intelligence Community should not be required to obtain court orders to effectively collect foreign intelligence from foreign targets located overseas. Simply due to technology changes since 1978, court approval should not now be required for gathering intelligence from foreigners located overseas. This was not deemed appropriate in 1978 and it is not appropriate today.

Second, those who assist the Government in protecting us from harm must be protected from liability. This includes those who are alleged to have assisted the Government after September 11, 2001 and have helped keep the country safe. I understand the leadership in Congress is not able to address before the August recess the issue of liability protection for those who are alleged to have helped the country stay safe after September 11, 2001. However, I appreciate the commitment of the congressional leadership to address this particular issue immediately upon the return of Congress in September 2007.

PROVISIONS THAT HARM INTELLIGENCE COMMUNITY OPERATIONS

The Intelligence Community should not be restricted to effective collection of only certain categories of foreign intelligence when the targets are located overseas. We must ensure that the Intelligence Community can be effective against all who seek to do us harm.

The bill must not require court approval before urgently needed intelligence collection can begin against a foreign target located overseas. The delays of a court process that requires judicial determinations in advance to gather vital intelligence from foreign targets overseas can in some cases prevent the rapid gathering of intelligence necessary to provide warning of threats to the country. This process would also require in practice that we continue to divert scarce intelligence experts to compiling these court submissions. Similarly, critical intelligence gathering on foreign targets should not be halted while court review is pending.

However, to acknowledge the interests of all, I could agree to a procedure that provides for court review—after needed collection has begun—of our procedures for gathering foreign intelligence through classified

methods directed at foreigners located overseas. While I would strongly prefer not to engage in such a process, I am prepared to take these additional steps to keep the confidence of Members of Congress and the American people that our processes have been subject to court review and approval.

I appreciate the President's and the congressional leadership's commitment to provide the Intelligence Community the necessary tools to protect our country and keep us safe from those who seek us harm. My most solemn duty is to protect America, provide warning, and ensure that our Intelligence Community acts within our Constitution and laws.

The PRESIDING OFFICER. Who yields time? The majority leader.

Mr. REID. Mr. President, before my distinguished friend leaves the floor, I just spoke with Senator LEAHY. He does not want his name as a sponsor. He is supportive of the deal, but he thinks it should be Rockefeller-Levin.

I yield.

The PRESIDING OFFICER. The Senator from Missouri.

Mr. BOND. Mr. President, I yield myself 5 minutes. First, before my good friend, the chairman of the Intelligence Committee leaves the floor, through the Chair, may I address the chairman of the Intelligence Committee. The Director of National Intelligence is sitting right off the floor here, and he has not seen—he has just seen your bill. He does not support it. I ask if the chairman of the Intel Committee would step outside and talk to the Director of National Intelligence to see whether, in fact, he does or does not support the Rockefeller bill or the bill that we introduced on behalf of the DNI, which is now pending as amendment No. 1927.

Mr. ROCKEFELLER. Has the distinguished vice chairman asked me a question?

Mr. BOND. Yes. Would you be willing to step off the floor to ask the DNI?

Mr. ROCKEFELLER. I don't need to. The head of National Intelligence has made it very clear and has issued a public statement that he supports our bill. He says:

I reviewed the proposal that the House of Representatives is expected to vote on this afternoon to modify the Foreign Intelligence [et cetera]. The House proposal is unacceptable, and I strongly oppose it. [et cetera] I urge Members of the Senate to support. . . .

Mr. BOND. I, at this time, reclaim my time and thank the chairman for his answer. Let me tell you, none of us have seen this bill that is a total new draft of the measure until just a few minutes ago, and we are absolutely stunned that this bill adds new burdens to the already overburdened process of collecting against foreign targets. This bill says it can only apply to communications between foreign persons without a court order. You can't tell if it is a communication between foreign persons when you target a foreign source because you don't know with whom that person is communicating. That is why there are so many burdens now on the FISA Court.

The DNI has said explicitly—he has told us that he opposes the Rocke-

feller-Levin bill. The DNI has stated that the bill that Senator MCCONNELL and I offered, S. 1927, which we filed on Wednesday night, is the bill that he supports.

Any one of my colleagues who wants to, I invite them to step out this northeast door and talk directly with Admiral McConnell because I think it is extremely important that you find out what his position truly is.

Let me be clear: The bill that was introduced by Senator MCCONNELL and me was the bill that Admiral McConnell had modified after having comments to which he listened from several Democratic chairmen on Tuesday evening. He added the provisions for court review—they are court reviews within 120 days, 4 months—that would be adapted to the new requirements in FISA that did not exist before that will take some time to get together. And it also included a provision that there would be, in addition to that—that there would be the DNI who would be one of the people making the certifications—two things that were requested.

There is one other modification that I will ask unanimous consent to make, or offer an amendment to make, when we prepare to debate on the bills, and that is to include a 6-month sunset so we will have the opportunity to review this bill.

With that, I will have more to say about that later, but the DNI explicitly will tell anybody who steps outside that he does not support this bill.

It is in the bill, excuse me.

I thank the distinguished majority leader. But with that, I will yield the floor and allow other Members to communicate.

Mr. ROCKEFELLER. Does the vice chairman yield?

The PRESIDING OFFICER. Who yields time?

Mr. BOND. I reserve the remainder of my time.

Mr. LEAHY. May I make a parliamentary inquiry?

The PRESIDING OFFICER. The Senator will state his inquiry.

Mr. LEAHY. Mr. President, we have before us two pieces of legislation; am I correct?

The PRESIDING OFFICER. That is correct.

Mr. LEAHY. Would the Chair please state who the sponsors are of the two individual pieces of legislation?

The PRESIDING OFFICER. S. 2011 is sponsored by Senator LEVIN and Senator ROCKEFELLER; S. 1927 is sponsored by Senator MCCONNELL and Senator BOND.

Mr. LEAHY. I thank the Chair.

Mr. REID. Is Senator LEVIN ready to speak? Is Senator FEINGOLD ready to speak? No.

Mr. BOND. Mr. President, I yield 4 minutes to the distinguished Senator from Virginia.

Mr. WARNER. Mr. President, I want to add a dimension to this debate, and that is that I have had the privilege of

knowing Admiral McConnell for some years. He does not have a scintilla of politics. He left a very lucrative position in the private sector to once again join and serve as a public servant. Thus far, I think all of us would say he has handled this challenging new office, Director of National Intelligence, with great distinction.

How well I remember just a week or so ago, I say to my distinguished colleague from Missouri, when he came up in S-407 and spoke to some 30 or so—more than that, close to 40 Senators, bipartisan—and Senator after Senator got up and complimented him on his very straightforward manner of delivery. Without hesitation he called the situations that were before him in question as he saw them. He communicated publicly with the Senate, expressing on the second of August his views of what he believed should be in those revisions that should be made by the Congress.

I find this procedure very disturbing. It is essential for the United States of America to continue to obtain the intelligence under this program. There is every desire to make sure that we will comply with the law, but the law does need some revision. It is incumbent upon this body and, hopefully, the House of Representatives to resolve this situation before we go into the August recess, because it is our own security that will suffer unless we follow the advice of this very distinguished public servant who only wishes to do what is best in the interests of the United States and the people of our country and our troops serving abroad, our troops serving wherever they are in the world.

The PRESIDING OFFICER. The majority leader.

Mr. REID. Mr. President, I appreciate everyone's hard work. It has been a very difficult time to get here. I especially wish to extend my appreciation to Senators ROCKEFELLER, LEVIN, LEAHY, FEINGOLD, DURBIN, MIKULSKI, FEINSTEIN, NELSON, and I am sure I have missed some people, but those are the ones whom I have heard from recently—and certainly SHELDON WHITEHOUSE, who put in the graveyard shifts.

I wish to say, before I turn to my prepared remarks, I too have the greatest admiration for Admiral McConnell, but I have to say, I am concerned that we have Admiral McConnell here checking on us. I mean, he should not be—"do you want to go ask him how he feels about this legislation?"

I can't appreciate that. I think it is wrong that this man whom we put in this very important position is here roaming the halls finding out how we are going to vote, sending Senators out to find out how he feels about it?

Mr. BOND. Will the distinguished Senator yield for a question?

Mr. REID. I will in a minute.

Because he supports the legislation offered by my friends Senators MCCONNELL and BOND and does not support

this does not mean this is bad legislation.

I will be happy to respond to a question. If you can use your time, that would be great.

Mr. BOND. Very quickly. Does the distinguished majority leader know that Admiral McConnell is here because three of his members specifically asked that he come over and comment on these bills, and at their request we invited him to come here to respond to their questions?

Mr. REID. I appreciate that. I misunderstood. I thought he was waiting in the hall to answer questions. You asked one Senator if he wanted to go ask him how he felt about the legislation. I think that is inappropriate.

Mr. LEAHY. Would the Senator yield for another question? I also note in here S. 1927 basically gives a great deal—

Mr. REID. I have the greatest respect for my friend. I wish to get my statement out while I have time. We are on a very limited timeframe. I know the Senator knows the details of it, but I have a few things I wish to say.

Mr. FEINGOLD. Mr. President, if I could I wish to make one comment about the issue the Senator raised about Admiral McConnell.

The last time we checked, there are 100 Senators elected to enact public policy. The notion that somebody who was confirmed by the Senate to execute these policies is a person who should be able to veto what we do here on the basis that he has a distinguished background is somewhat questionable.

That discounts the qualities of every Member of this body, that discounts the qualities of every hard-working staff member who knows the law and has good ideas about what this public policy should be.

I voted for Admiral McConnell. I respect him. The day we start deferring to someone who is not an elected Member of this body, or hiding behind him when you do not have the arguments to justify your position is a sad day for the Senate. We make the policy, not the executive branch.

Mr. REID. Mr. President, I may have to use a little bit of leader time because our time is fast ending. So I will do that as quickly as I can.

Mr. President, as we know from the briefings we have received from the Director of National Intelligence, the FISA law needs to be updated. But I underscore and certainly want to be made part of the statements made by my friend, the Senator from Wisconsin, Mr. FEINGOLD.

Our intelligence community professionals are currently lacking, we are told, critical information and tools they need to protect this Nation from terrorism.

My goal, when I learned about the intelligence communities' concerns, was to pass the legislation that addresses DNI's legitimate concerns, asserts our oversight responsibility, protects the rights of American citizens, and is temporary in duration.

I believe the legislation offered by Senators ROCKEFELLER and LEVIN achieves each of these goals, gives the communities all the tools they need, but at the same time it makes the independent FISA Court, not the Attorney General, the overseer of the methods and procedures used for collecting foreign intelligence.

Democrats and Republicans want to aggressively pursue al-Qaida and other terrorist organizations and other terrorists. This bill does that, but not at the cost of targeting American citizens without court authorization. We have had many conversations in the last several days with Admiral McConnell. I can say with great confidence that this legislation provides him with everything he asked for in these discussions, everything.

He told us he wanted the tool to collect foreign-to-foreign intelligence communications without a warrant. He got it. He told us he wanted the ability to compel compliance from communications providers with liability protection. He got it.

He told us he wanted the ability to collect all foreign intelligence information, not just intelligence related to terrorism. He got it. He told us he wanted the ability to temporarily begin the collection of intelligence without seeking a court order. He even got that.

In fact, the legislation was provided by the administration to Admiral McConnell, and that legislation, he said in a statement today, he strongly supports—which we have heard—served as the starting point for the Levin-Rockefeller legislation. That is what we have before us; it is a modified McConnell amendment.

What we have before us tonight, with very modest edits, is Admiral McConnell's proposal, what he told us he wanted, and what he gave us in writing.

I would hope it receives the broad support of the Senate. The Bond legislation, on the other hand, is not something I can support. It authorizes, in my opinion, warrantless searches of Americans' phone calls, e-mails, homes, offices and personal records and for however long it is appealed to the court of review and the Supreme Court takes. This process could take months or indeed years.

Even worse, the search does not have to be directed abroad, just concerning a person abroad, any search, any search inside the United States, the Government can claim to be concerning al-Qaida is authorized. I do not believe that is the right way, the strong way or the Constitutional way to fight the war on terrorism. I urge all Members to support the Rockefeller-Levin bill.

It does everything that Admiral McConnell has requested. It strikes the right balance between protecting the American people from terrorism and preserving their Constitutional fundamental rights.

Let the record be clear: Every Senator here tonight is patriotic and

wants to get rid of these bad people and find out everything they are talking about, in a way that is in keeping with our Constitution. I appreciate the service of my friend from Missouri. He has been a valiant member of that committee and does a good job.

So let's not question tonight, and I hope I have not done that, anyone's patriotism or what they are trying to do. What we are trying to do is the right thing. But I believe the best way to go is by supporting the second vote, which will be Levin-Rockefeller.

The PRESIDING OFFICER. Who yields time?

Mr. REID. How much time do we have on our side?

The PRESIDING OFFICER. Fifteen minutes.

Mr. REID. I yield 7 minutes to Senator LEVIN, 5 minutes for Senator FEINGOLD.

The PRESIDING OFFICER. The Senator from Michigan.

Mr. LEVIN. Mr. President, I wish to read the key section of our bill. It says that:

A court order is not required for the acquisition of the contents of any communication between persons that are not located in 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.

That is the heart of the matter. That is what Admiral McConnell has requested. That is what both bills provide, both bills cure the problem that exists. There is a problem. We have to cure it. Our bill, in addition to the Bond bill, both bills do that.

Now, what are the major differences between the bills? What Admiral McConnell has indicated to us in a statement:

The intelligence community should not be required to obtain court orders to effectively collect foreign intelligence from foreign targets, located overseas.

That is in both bills. Except our bill is limited to foreign targets located overseas, unlike the Bond bill, which does not have that key limitation and which, it seems to me, very clearly applies to U.S. citizens overseas. Our bill does not.

Now, if there is an incidental access to U.S. citizens, we obviously will permit that. That is not the problem. It is called minimization. We do not try to affect that. But the key difference between the Rockefeller-Levin bill and the Bond bill is that we carry out what Admiral McConnell has said repeatedly, not just in the statement I read but also in newspaper articles that he has written in the Washington Post.

What does he say there? He says that: In a significant number of cases, our intelligence agencies must obtain a court order to monitor the communications of foreigners suspected of terrorist activities who are physically located in foreign countries.

Now, our bill does that. But what does the Bond bill do? The Bond bill

goes beyond that. In its first section it says:

Nothing in the definition of electronic surveillance under section 101(f) shall be construed to encompass surveillance directed at a person reasonably believed to be located outside of the United States.

Any person. Does not say a foreign person. Admiral McConnell has been very precise. We have all heard him over and over again. He has been precise in his written statements, he has been precise orally. They want access, and we have to give them access.

When foreign persons communicate with foreign persons, even though, as our bill says, the communications might be routed through the United States, that is the problem that must be cured. It is cured in both bills. But we avoid doing, in our bill, what the Bond bill does, which is to say, as it very explicitly does: That if surveillance is directed at a person, which means any person—it could be a U.S. person, reasonably believed to be located outside of the United States—then it is permitted, it is authorized, in that first section of the Bond bill, 105(a). That is one of the critical differences, the most important difference, between Rockefeller-Levin, which does what the Admiral says we must do, find a way with the new technology where calls may be routed through the United States, to get to those communications by foreign persons to foreign persons.

We must do that to defend the country. We must do it. We do it. But we avoid doing what Admiral McConnell says he does not want to do, which is to get to the communications of Americans.

There you have to go for a warrant. That is what he says we should continue to do. He says it eloquently, in writing and orally. We protect that very vital interest.

There are a number of other differences. To give you one: What the Bond bill does is it says that: In terms of reviewing and auditing, the way this works, the audit will be carried out by the Attorney General of the United States, in effect auditing his own work, reviewing his own work.

On a semiannual basis, it says in section 4, the Attorney General shall inform the Select Committee, et cetera. The Attorney General shall give us a report concerning acquisitions—that is the intercepts—during the previous 6-month period. Each report shall include—then it describes all of the reports—a description of any incidents of noncompliance with a directive issued by the Attorney General and the Director of National Intelligence; incidents of noncompliance by a specified person to whom the Attorney General and Director of National Intelligence—so the Attorney General, under the Bond provision, is reporting to Congress about his own activities. What kind of an independent report is that?

So in the Rockefeller-Levin bill, we do not say to the Attorney General:

Report on your own activities. We say to the inspector generals, three of them, they all have access here and all have a role: We want the independent assessment from you. We want a report to Congress not by an Attorney General reporting on his own activities but by the inspectors general who have that independence, which is so critically important.

I understand my time is up.

I yield the floor.

The PRESIDING OFFICER. Who yields time?

Mr. BOND. Mr. President, I yield 5 minutes to the distinguished Senator from Connecticut.

Mr. LIEBERMAN. I thank the Chair, and I thank the Senator from Missouri.

May I say first that I regret this debate is happening at all. I regret the news coverage of this discussion. I wish this had been able to be settled among Members of both parties in both Houses and the executive branch. If not, I wish we were debating this in executive session. Why do I regret this debate is occurring? Because we are at war. We were attacked on September 11, 2001 by a brutal, inhumane enemy who killed 3,000 Americans and intends to do so again. They tell us repeatedly. This is about gathering intelligence on that enemy.

I regret we are having this debate. I regret all the publicity, because I fear they will learn something indirectly about the methods of intelligence we have. But here we are.

I want to explain why I will vote for the McConnell-Bond proposal. I am because we are at war. I am because it has been publicly suggested there is increased terrorist activity. We have seen the Web site of threats against the United States, suggesting even threats against the Capitol, the citadel of our democracy, by these extremist Islamist terrorists. Admiral McConnell, whom everyone says they respect—I respect him; I trust him—says to us—and I will be as vague as I need to be and want to be—he is missing for a reason a tool he needs to adequately gather intelligence on the terrorist threat. He has told us what he needs to close that gap. I think we are beyond the point of debating what might be a better way to do this. I feel that particularly because Senator BOND has added the 6-month sunset.

We have a crisis. We are at war. The enemy is plotting to attack us. This proposal will allow us to gather intelligence information on that enemy we otherwise would not gather. This is not the time for striving for legislative perfection. We have the 6 months after this is adopted to work together to try to do something everyone believes is more appropriate. Concerns have been expressed about American citizens, again being as vague as we all ought to be. The fact is, we have been told authoritatively that these acts of surveillance will only touch American citizens coincidentally, and an infinitesimally small number. So you have to

balance. What are your concerns about that, a program run by Admiral McConnell and an extraordinary staff at the NSA who work for us? These are our soldiers in the war against terrorism. I want to give them the power and authority they need to find out what our enemy is doing so we can stop them before they attack us.

With all respect to my colleagues, I plead with everyone, let us not strive for perfection. Let us put national security first. Let us understand if this passes, as I pray it will, and the President signs it, as I know he will if it passes both Houses, we are going to have 6 months to reason together to find something better. If we leave Washington for August recess without closing this gap in our Nation's intelligence capabilities at a time of war, it will be quite simply a dereliction of duty by this Congress. It will be a failure to uphold our constitutional responsibility to provide for the common defense.

I appeal to my friends on both sides of the aisle, let's do what we need to do now. Let's do what Admiral Mike McConnell, the Director of National Intelligence, tells us he needs to provide intelligence to our Government to enable our Government to protect us from terrorists.

I yield the floor.

The PRESIDING OFFICER. The Senator from Wisconsin.

Mr. REID. I yield the Senator from Wisconsin 5 minutes.

The PRESIDING OFFICER. The Senator was yielded 5 minutes. You have 8 minutes left.

Mr. REID. Would you mind going next, Senator BOND? You have 16 minutes and we have 8.

Mr. BOND. I yield to the Senator from California 2 minutes.

Mr. REID. I will yield her 1 minute.

The PRESIDING OFFICER. The Senator from Wisconsin has the floor.

Mr. FEINGOLD. Let me respond to what the Senator from Connecticut indicated. In times of war, we don't give up our responsibility in the Senate to review and make laws. The notion that we simply defer this to the Director of National Intelligence and whatever he says is an abdication of our duties, especially in times of war. In fact, let's remember why this is here. The Senator regrets we are debating this and some of these very important matters that are generally kept secret are being discussed. I agree. But why are they secret? Because the administration was conducting an illegal wiretapping program and somebody inappropriately blew the lid on that. That wasn't the doing of anybody in this body. That was due to the incompetence and inappropriate conduct of this administration in the first place. That is why we are here with this kind of debate, not because of anything anybody did here.

By the way, this horrible conflict we have with those who attacked us on 9/11, this conflict is something we all

agree on. Not a single Senator doesn't think we should be able to get at these foreign calls. Not a single Senator doesn't want to give the admiral what he has asked for that is reasonable. We simply want protection for the civil liberties of people who have done absolutely nothing wrong.

Let's be sure what this debate is about. I thank the majority leader and Senator ROCKEFELLER, Senator LEVIN, Senator LEAHY, and especially Senator WHITEHOUSE, who put tremendous effort into this, for trying to make this as good as possible.

I am going to vote for the Rockefeller-Leahy-Levin bill. I am concerned we are moving too fast and that we have not necessarily come up with the right answer to the problem we all recognize exists. But I am prepared to vote for this because I think it is at least a reasonable approach for addressing legitimate problems without unduly compromising the civil liberties of Americans. I do so with great reluctance, with the expectation that this is an experiment with a short expiration date, an experiment we can assess and modify as we move forward.

But we cannot pass the Bond-McConnell proposal. This bill would go way too far. It would permit the Government, with no court oversight whatsoever, to intercept the communications of calls to and from the United States, as long as it is directed at a person—any person, not a suspected terrorist—reasonably believed to be outside the United States. That means giving free rein to the Government to wiretap anyone, including U.S. citizens who live overseas, servicemembers such as those in Iraq, journalists reporting from overseas, or even Members of Congress who are overseas and can call home to the United States. This is without any court oversight whatsoever. That is unacceptable.

It goes far beyond the identified problem of foreign-to-foreign communications that we all agree on. It goes far, far beyond the public descriptions of the President's warrantless wiretapping program. What little judicial review the bill does provide is essentially meaningless. The FISA Court would decide only whether the Government certification that it has put reasonable procedures in place to direct surveillance against people reasonably believed to be abroad is "clearly erroneous." That is basically a standard that is nothing more than a rubberstamp. It ignores the real issue which is protecting the rights of Americans who may be calling or e-mailing friends, family, or business partners overseas and who have done absolutely nothing wrong.

Let me point out that the so-called court review in the Bond bill will never happen, because the court only has to rule within 180 days of enactment, and there is now a sunset on the bill after 180 days.

A 6-month sunset does not justify voting for this bad version of the bill.

We can't just suspend the Constitution for 6 months.

I strongly oppose the Bond bill, and I urge my colleagues to oppose it.

Mr. KENNEDY. Mr. President, there is general agreement on both sides of the aisle that we have a foreign intelligence surveillance problem that should be addressed. The difference between us is that on this side of the aisle we have consistently been willing to work cooperatively to solve the problem.

There is a model. In 1976, we faced a similar problem. The Senate Select Committee to Study Governmental Operations with Respect to Intelligence Activities, known as the Church Committee, had found disturbing abuses of electronic surveillance. Congress and the administration set out to pass a law to prevent such abuses in the future, while still protecting our national security.

In 1976, I was the principal sponsor of the original bill that became FISA. When my colleagues and I first introduced the bill, we had a Democratic Congress, a Republican President, Gerald Ford, and a Republican Attorney General, Ed Levi. Attorney General Levi understood the need for Congress and the executive branch to work together. Members of the Judiciary Committee went down to the Justice Department at least four times to meet on the bill. There were discussions with Henry Kissinger, Don Rumsfeld, Brent Scowcroft, and George Bush among others.

We worked responsibly and cooperatively to develop legislation to protect our civil liberties and ensure that the Nation could use necessary surveillance. In the end, Attorney General Levi praised the bipartisan spirit of cooperation that characterized the negotiations and produced a good bill. That administration recognized the importance of working with Congress. The final bill was passed by the Senate by a vote of 95 to 1.

As this history demonstrates, our Nation is strongest when we work together for our national security. Unfortunately, the current administration has chosen a very different course. President Bush has refused all along to consult Congress on the development and implementation of its surveillance program, and now we find that it violated the law.

This is not an argument for granting expanded discretion to the administration. There is simply no basis for trusting this administration to respect the privacy of the American people. Nor do we have any confidence in the administration's competence to adopt a lawful and effective program.

When Attorney General Gonzales appeared before the Judiciary Committee in February 2006, I questioned him about FISA and the recently revealed warrantless eavesdropping program. I offered to work with him then. In fact, I asked him why he had not approached Congress sooner, given Attorney Gen-

eral Levi's success and given the cost of getting it wrong. He answered: "We did not think we needed to, quite frankly."

Well, we now know that wasn't true. I pointed out to the Attorney General at the time the benefit of having consensus on this issue and the importance of fostering a cooperative atmosphere. His answer to me was: "I do not think that we are wrong on this." But they were wrong, which is why we are debating this issue at the eleventh hour today.

I told him then that the administration was sending the wrong message to the courts, that they were jeopardizing our ability to convict terrorists by using these illegal intelligence methods. The Attorney General said:

That is the last thing we want to do. We believe this program is lawful.

He was wrong again. The program is not lawful and administration needs Congress to fix it.

I did not stand alone on these issues. I had the support of many of my colleagues on the committee on both sides of the aisle. Yet the record is clear that the Attorney General repeatedly rebuffed our efforts to work with the Administration to get this legislation right the first time.

Instead, the Attorney General and the President have consistently rejected congressional input and oversight. They have repeatedly demanded that Congress rubberstamp their decisions and trust their discretion. We have seen where that leads, and we owe the Nation a better approach.

We should pass legislation today that closes the gap in current law and preserves the critical role of the Foreign Intelligence Surveillance Court in protecting our civil liberties.

Unfortunately, some of our colleagues, instead of using this opportunity to work together to safeguard the Nation, would prefer to pass yet another partisan assault on the rule of law and American civil liberties. They insist on diminishing the role of the FISA Court and increasing the unsupervised discretion of the Attorney General and the Director of National Intelligence. They want to trust Alberto Gonzales to ensure that the Government does not listen to the phone calls and read the e-mails of Americans without justification. We need to modernize FISA, not undermine it. Their proposal clearly contradicts the fundamental purpose of the initial legislation.

This administration railroaded us into war in Iraq, railroaded us into passing the PATRIOT Act and the Military Commissions Act and now it wants to railroad us into amending FISA without the time or information to consider the need properly.

We take a backseat to no one in wanting to keep our America safe. We know that our families, our friends, and our communities are at stake. We want to give our intelligence agencies the tools they need, but there is a right

way and a wrong way to do it. This eleventh-hour grandstanding by administration is the wrong way to do it.

We should remember how we reached this point. For 4 straight years, the Bush administration recklessly conducted warrantless surveillance in violation of FISA. The President acknowledged this surveillance only after it was reported in the press. Until January of this year, the administration refused to bring its surveillance program under the oversight of the FISA Court, despite the clear statutory requirement to do so.

The FISA Court has now reviewed the surveillance and has issued a ruling. It has declared that a significant aspect of the President's warrantless surveillance program, in operation for 4 years without any oversight, violates the law and cannot continue. Without bipartisan congressional pressure to force that review, these and other despicable violations of the rule of law would have gone on and on. Even today, the Attorney General continues to mislead Congress on basic information about the program, and he refuses to provide the legal justifications on which he relied.

Now, after the FISA Court's clear ruling, the administration is urgently demanding that we correct their mistake. We can do that. We can reach the appropriate balance between modernizing the legislation to protect our national security and maintaining its basic protection of civil liberties. If the administration and its allies are serious about effectively protecting the country from terrorist threats, and doing so under the rule of law, they should support such legislation.

Mr. LEAHY. Mr. President, the Rockefeller-Levin bill might not be precisely the bill I would have written to fix the problem, but it is a responsible and targeted fix to the Foreign Intelligence Surveillance Act, FISA, problem that has been identified. It is an appropriate response to the need expressed by Director of National Intelligence McConnell regarding our foreign intelligence collection overseas. In addition, it tries to preserve some balance and some protections for the civil liberties of Americans by keeping the FISA Court involved when there are significant communications to and from the United States.

I have been briefed by the DNI and his staff and met with him several times recently about a problem that our intelligence agencies are having in collecting information from overseas. I have said that I am willing to fix this problem, and I am. I have proposed ways to fix this identified problem. It might not be everything he would like, his wish list, but it solves his problem. The Congress has shown that it is willing and able to reform FISA when changes are needed. We have done so many times since FISA was first passed in 1978 and at least half a dozen times since September 11, 2001. I believe such a targeted, responsible fix is justified.

To achieve that fix, I would vote for Rockefeller-Levin. We could enact the needed change immediately. As I have

indicated, it is not everything that I would have wanted or drafted precisely as I would have written it. But it does the job and achieves a better balance than any viable alternative. I have worked with Senator ROCKEFELLER for weeks on this matter and appreciate his leadership on this matter, as well as that of Senator LEVIN.

The problem our intelligence agencies are having is with targeting communications overseas. We want them to be able to intercept calls between two people overseas with a minimum of difficulty. Obviously, the situation is complicated when people overseas might be talking to people here in the United States. These calls could be innocent conversations of businesspeople, tourists, our troops overseas to their families, or to other friends or family in the United States. We should want to give the Government great flexibility to listen to foreign-to-foreign calls, while still protecting privacy of innocent Americans by making sure the Government gets warrants when they are involved.

The Rockefeller-Levin bill accomplishes both of these things. It provides a very flexible standard up front for the Government—it is only required to go to the court for approval of procedures for how it will know that the targets are, in fact, overseas. There is no case-by-case application and approval of warrants for these overseas targets. There is even an initial emergency provision that would allow the Government to start these interceptions before the court has done anything.

To protect Americans, the House bill requires the Government to have guidelines—and show them to the Congress—for how it will determine when a target is having regular communications with the United States. Then they need to go back to the regular FISA procedures and show probable cause. Also, the Department of Justice inspector general must do an audit of the conduct under this bill to see how much information about people in the United States is being collected and must provide that audit to the court and Congress. Because this process has been so expedited and the issues involved are so significant, the bill would sunset in 180 days, so the Congress and the administration will have an opportunity to review it and act in a more deliberative way on these important issues.

Some things were added here that I might not have done. It now applies to all foreign intelligence targets, not just those involving international terrorism. It also does not require the court to review and approve the guidelines for handling significant communications with the United States, only the Congress sees this. These aspects trouble me. They are significant. The Director of National Intelligence has said that with these changes, the bill solves his problems and would significantly enhance our national security. This bill should resolve the matter, but this administration does not know how to take "yes" for an answer.

Regrettably, what has come over from the administration and has been

introduced here by Senator BOND and Senator McCONNELL goes far beyond what the DNI said he needs and I fear would be very harmful to the civil liberties of Americans. The bill the administration has proposed is a vast rewrite of the FISA law that undercuts the purposes of that act in significant ways. What the administration has done is leverage a fixable problem into passage of a wish list of ways to give the Attorney General and through him the White House virtual unfettered authority to conduct surveillance. It would take away any meaningful role for the FISA Court for calls between overseas and the United States. In fact, because it is not restricted to terrorism but involves any foreign intelligence, the administration's bill gives them far greater authority than they had claimed in their secret, warrantless surveillance program.

This bill allows Attorney General Gonzales to order surveillance. This Attorney General is in charge of decisions about when to conduct surveillance and can instruct the court to enforce those decisions. In effect, the only role for the court under this bill is as an enforcement agent—it is to rubberstamp the Attorney General's decisions and use its authority to order telephone companies to comply. The court would be stripped of its authority to serve as a check and to protect the privacy of people within the United States. Their bill likewise requires no review or audit by the Justice Department or anyone else about the number of U.S. communications that are being gathered by these orders.

I believe it is important to solve the problem our intelligence agencies are having right now. It is also essential to preserve the critical role of the FISA Court in protecting civil liberties of Americans. The House bill will do both of these things better than its alternatives.

Mrs. BOXER. Mr. President, I believe we need a short-term and long-term fix for FISA. It is important to extend the program now and then finish the job in the weeks and months ahead. Updating FISA has to be done in a meticulous way. The real work will come in the near future when there is time to debate how to update this important tool that we need to protect the American people.

• Mrs. MURRAY. Mr. President, today, Senate Democrats offered the Bush administration the tools needed to fight international terrorism while upholding the very liberties that our enemies seek to destroy. That is why I support S. 2011, the Rockefeller-Levin Protect America Act.

The Rockefeller-Levin bill strengthens our ability to protect Americans, while ensuring this authority doesn't undermine our freedoms. Rockefeller-Levin gives the Director of National Intelligence the authority to obtain all essential intelligence information while preserving a role for the independent FISA Court to oversee his methods and protect our constitutional liberties.

To simply legitimize the Bush administration's warrantless wiretap program and provide unchecked authority to invade the personal privacy of all Americans is the wrong message to send to our citizens and the world.

Our Constitution provides for a separation of powers to protect our Nation and our way of life, and I, for one, do not believe we can undermine the liberty our troops have fought for generations to ensure.●

Mr. LAUTENBERG. Mr. President, I rise to speak directly to the American people to tell them that this Senator understands the risks that our country faces and I will do everything in my power to protect them from a terrorist attack.

We have a President whose words do not match his actions and who continues to accuse Democrats of being weak on terrorism and unwilling to do what it takes to secure our nation.

Nothing could be further from the truth.

New Jersey was hit on September 11th we lost 700 people on that fateful day. Not a day goes by when I don't think about it. And it is largely that day that brought me back to this Chamber.

My State is ripe with targets for terrorists, from its ports to its chemical plants and it has the most dangerous 2 miles for terrorism within it borders. So President Bush please don't lecture me on terrorism.

Instead of rhetoric, the Senate has been acting to defend our homeland. Just last month we passed a bill to fund our homeland security needs next year. It would put \$38 billion into making our homeland safer and more secure.

What does the President do? He says he will veto it. Why? Because he thinks it costs too much. It costs too much? How do you measure the cost of protecting us from terror?

And President Bush is accusing others of being weak on homeland security?

The President is upset because Congress plans to put \$2 billion more into homeland security than he thinks we should do. That is less money for a year of homeland security than we spend in one week in Iraq. This is a critical bill, and the President should have his pen ready to sign it, not continue to shortcut security for millions of people within our borders and within our homeland.

On Wednesday night, we saw a terrible incident when a bridge collapsed in Minnesota, causing fear, death, and injury. It brought to light the serious infrastructure needs of our country. What does President Bush do the next morning? He played raw politics and accused Congress of not working hard enough to fund our transportation needs. Again, nothing could be further from the truth.

The Senate Appropriations Committee has passed a transportation bill that is ready to go the Senate floor. It

includes \$5 billion for bridge replacement and rehabilitation across the Nation a full \$1 billion increase over last year's amount. Guess what. The President is threatening to veto that one as well. Why? Again he thinks it costs too much to protect people domestically.

And now the administration is telling us there are gaps in our ability to gather intelligence about terrorists. So we are trying to make changes to the law dealing with the surveillance of emails and phone calls to make sure we protect the American people. And we must make those necessary changes, even if we stay here through the month of August to do so. But we must do so in a way that balances our national security with our fundamental civil rights.

I yield the floor.

The PRESIDING OFFICER. Who yields time?

Mr. REID. When she completes her statement, we have 2 or 3 minutes left; is that right?

The PRESIDING OFFICER. That is correct.

The Senator from California.

Mrs. FEINSTEIN. Mr. President, I remember well the day I saw the letter from Admiral McConnell. I believe the day was July 24. That is not a long time ago. But it was a kind of wake-up call to us. Because what that letter says in essence is he believes the United States is vulnerable, and he believes we need to move quickly to change FISA.

From an intelligence point of view, many of us believe the chatter is up. It is not necessarily well defined, but during the 9/11 period, this is clearly a period of heightened vulnerability. Therefore, what Admiral McConnell wants to do is be able to better collect foreign intelligence. I very much respect what has happened. I respect the bill that was put together on the Democratic side, and I respect the bill that was put together on the Republican side, which is the McConnell bill on that side.

The Senator from Wisconsin might be interested to know that some of us just met with Admiral McConnell, particularly to discuss Senator FEINGOLD's concern. There is a different point of view. A U.S. citizen in Europe is, in fact, covered. A U.S. citizen in Europe, the minimization under certain specific laws, not FISA, but precisely 12333 point something, which I cannot remember at the present time, comes into play. That U.S. citizen is subject to a warrant from the court.

This is a temporary bill. It is to fill a gap. The court has done something which has said that what has existed for decades with respect to the collection of foreign intelligence now cannot exist under the present law, and we need to change that law.

It is my intention to vote for both bills. The reason I will vote for both bills is to see that some bill acquires the 60 votes to get passed tonight. We are going out of session. There is no

time. I think this is unfortunate. I received the Democratic bill about 20 minutes ago. I went into the leader's office, tried to sit down and get briefed. Up to this point I still don't understand it. I spent all afternoon on the McConnell bill. I am just beginning to understand the subtleties in it and the other laws that come into play.

This is not going to be an easy vote for anyone. But what we have to think of right now is, on a temporary basis, how do we best protect the people of the United States against a terrible attack.

I thank the Chair and yield the floor.

The PRESIDING OFFICER. Who yields time?

Mr. BOND. Mr. President, I yield 3 minutes to the Senator from Texas.

The PRESIDING OFFICER. The Senator from Texas.

Mr. CORNYN. Mr. President, I know Members are working in good faith to try and resolve this controversy. I decided to go directly to the source, the Director of National Intelligence, right off the floor here tonight monitoring the debates. I asked him what the difference was between the Rockefeller-Levin proposal and the Bond-McConnell proposal. He said to me the Rockefeller-Levin proposal has, in his view, unrealistic timelines. It creates situations of delay, and it creates other structural problems with regard to monitoring foreign-to-foreign communications which should not be the subject of lengthy court proceedings that are otherwise necessary to monitor domestic communications. The Director of National Intelligence, who is non-partisan, an individual experienced in military matters and intelligence-gathering matters—I don't know any better source to go to who would give me an objective rendition of the differences between these two bills.

I hope colleagues will support the McConnell-Bond alternative as one that would be superior to the Rockefeller-Levin proposal and one more likely to protect the American people against terrorist attacks by those who want to do us harm.

I yield the floor.

The PRESIDING OFFICER (Mr. WHITEHOUSE). Who yields time?

Mr. BOND. Mr. President, how much time remains on this side?

The PRESIDING OFFICER. Twelve minutes.

Mr. BOND. All right. Mr. President, first, I want to make a point clear. I had referred earlier to comments made by my good friend, the distinguished chairman of the Intelligence Committee, who thought the bill they introduced was a bill that Admiral McConnell had supported. Admiral McConnell has just released a statement saying that he appreciates the efforts to address critical gaps in our current intelligence capabilities: I cannot support the proposal. It creates significant uncertainty in an area where certainty is paramount in order to protect the country. I must have certainty

in order to protect the Nation from attacks that are being planned today to inflict mass casualties.

Really, there are a number of problems with the bill that has been presented on the other side. But the main problem is it says you do not need a court order to collect on communications between persons who are not located within the United States, and the rest of the collections are required to have a court order.

Now, this morning, I read on the Senate floor a declassified summary of an order issued by the FISA Court saying this provision, this statute, FISA, must be amended because due to uncertainties and technological changes, they are spending so much time having to work on orders for collection involving the foreign targets—foreign targets whose impact on the privacy rights of Americans is minimal.

Why is that a problem? The problem is, you do not know—if you are targeting a foreigner—whether that foreigner is going to call or communicate with another foreigner. If you do not, under the bill provided by ROCKEFELLER and LEVIN, you would have to get a court order. You would have to get a court order if you could not prove the person they were communicating with was not in the United States. And you cannot do that. That is an impossibility. That is an impossibility. You cannot have an order that tells you they are going to be foreign communications only because you do not know until you intercept the communication to where it is going.

Now, there are a number of other questions about the bill. I just have to say the concerns that have been raised—and they are legitimate privacy concerns—are addressed by minimalization procedures. Under what is called the McConnell-Bond bill—which was requested by Admiral McConnell, who modified his original proposal—under that bill, if an American citizen is caught in a communication from an al-Qaida target or another foreign target, then that person's participation is minimized. And if it is not foreign intelligence, that is completely dumped.

Under our bill, like under the previous FISA provisions, you cannot target an American citizen or a U.S. person, including people here on green cards and here in the country, without getting a court order. That is what the FISA Court was set up to do—just to protect people in the United States.

There are protections for the U.S. persons who are caught, incidentally, and they are minimized. Their names are not even identified unless there is evidence of terrorist activities.

Now, the measure we have provided, the McConnell-Bond bill, S. 1927, is one which does meet the needs that were identified by the FISA Court and by Director McConnell to clear up the backlog because there is a huge backlog they cannot work through. The FISA Court is overburdened. They can-

not work through and issue the orders because of the tremendous amount of paperwork.

So we must do this now. We must do this tonight to give the intelligence communities the powers they need to collect information at a time when the threat is heightened. If we do not do that, we are in great danger.

We have to do other things, and we will come back and revisit the other things, such as dealing with carrier liability and streamlining the process. Those we must do. That is why we included the sunset at a year.

Mr. President, I yield 1 minute to the Senator from Florida.

The PRESIDING OFFICER. The Senator from Florida.

Mr. NELSON of Florida. Mr. President, both bills in front of us allow for foreign-to-foreign intelligence collection without a court order. What is going to surprise you is, neither bill protects an American citizen abroad from being collected upon. Neither bill does. That protection comes in the President's Executive order.

What we are going to do, hopefully, is pass one of these bills tonight, which is a temporary measure that will get us past this problem of the increased traffic that is out there and the concern of an attack. Then, with cool deliberation, we are going to have to address the problem that is omitted in both bills.

Mr. President, it is my intention because of that to vote for both of the bills this evening, hoping and praying that one will pass.

The PRESIDING OFFICER (Mr. DURBIN). Who yields time?

The Senator from Missouri.

Mr. BOND. Mr. President, I yield 2 minutes to the Senator from Georgia.

The PRESIDING OFFICER. The Senator from Georgia is recognized for 2 minutes.

Mr. CHAMBLISS. Mr. President, I thank the ranking member and the minority leader for the introduction of this bill.

It looks to me, Mr. President, like we have boiled this down to a specific issue of both bills saying they cover foreign-to-foreign surveillance. The problem is, when NSA has its eyes and its ears out on the wire, NSA does not know who an individual, who is in a foreign country, is calling—whether they are calling somebody foreign or whether they are calling somebody domestically.

So if they know somebody is a foreign caller, it is imperative we provide our intelligence gatherers with the opportunity to discover the conversations that are taking place between that foreign caller and whomever they may be calling, if—and only if—it involves potential terrorist activity. And we are not going to be listening in to any foreign caller unless we know they are a member of al-Qaida under current law.

So the clear difference in these two bills is this: The bill offered by Senator McCONNELL and Senator BOND says,

very clearly, that NSA will have the tools necessary to listen to any conversation from a foreign al-Qaida member to a callee anywhere, whether it is foreign or domestic, versus the bill offered by the Democrats that may say you can have a foreign-to-foreign intercept, but the problem is there is no clarity in the Democratic proposal as to who the callee is.

So it is pretty clear, if we are going to give the NSA the opportunity to protect Americans, we have to pass the bill of Senator McCONNELL and Senator BOND.

I yield the floor.

The PRESIDING OFFICER. The Senator's time has expired.

Who yields time?

The Senator from Missouri.

Mr. BOND. Mr. President, I yield 2 minutes to the Senator from Pennsylvania.

The PRESIDING OFFICER. The Senator from Pennsylvania.

Mr. SPECTER. Mr. President, to state the obvious: This is a very troublesome way to legislate. We have been looking at this issue for more than a year. Senator FEINSTEIN introduced legislation, and so did I. And it comes down to the last minute. We have waited in the Chamber all day.

I have just talked to the Director of National Intelligence, Admiral McConnell, who says only the Bond bill is acceptable for our security interests. I heard it from him personally. The President is reportedly prepared to sign only the Bond bill.

I have just had a hurried conversation with the senior Senator from Michigan, who has handled the negotiations on the Rockefeller bill. He has stipulated three points of concern which I think could be ironed out, Director McConnell says in the course of a couple of hours. But we are not having the couple of hours. Perhaps if both bills fail, we will be back to try this again tomorrow.

But as I listened to what Senator LEVIN has had to say: It would be better if in one spot it said “foreign persons”—but I believe that is the intent, although it is not really explicit—I think it would be preferable if the Attorney General was not making the certification—a point I have made repeatedly—and there is an element of delay.

So to say it is not a perfect bill is again to state the obvious. But I think it is time we have to act and, therefore, I am going to support the Bond bill.

The PRESIDING OFFICER. Who yields time?

Mr. REID. Mr. President, I yield 1 minute to the Senator from Maryland, Ms. MIKULSKI, leaving me with 1 minute.

The PRESIDING OFFICER. The Senator from Maryland is recognized for 1 minute.

Ms. MIKULSKI. Mr. President, our first goal as members of Congress is to protect and safeguard the American people against terrorist attacks. I take

my oath to do so very seriously. That is why I support reform of the Foreign Intelligence Surveillance Act. As we approach the anniversary of September 11, this is a time for more intense vigilance. Real threats to our country remain.

As a member of the Senate Intelligence Committee, every day I see how terrorists want to harm the American people. Terrorists still have a predatory intent to harm the United States. Reforming FISA today provides the intelligence community the tools it needs to disrupt ongoing terrorist operations against the United States.

We have two proposals to consider tonight. Both are temporary ways ahead. Each proposal takes important steps to secure the safety of our country by reforming this important law. The Rockefeller-Levin proposal is desirable, while the McConnell proposal is acceptable.

Each proposal provides the intelligence community the key tools it needs to disrupt terrorist plans and intentions, while retaining the legal safeguards that protect the rights of every American.

These proposals are consistent with the principles that the Director of National Intelligence requested to improve the FISA process: enhance intelligence collection against terrorist operatives communicating to each other overseas—foreign to foreign; provide legal safeguards to protect the rights of American citizens—consistent with law, a warrant is still required to monitor communications of American citizens inside the United States—provide prospective liability protection to private-sector companies assisting our efforts in keeping this country safe.

These proposals are time limited. A more comprehensive and permanent solution is necessary. As a member of the Intelligence Committee, I will work with my colleagues on a more comprehensive and permanent solution to reforming FISA.

Al-Qaida continues to want to inflict damage on our country. This proposal gives important tools to the intelligence community to disrupt the terrorists' plans and intentions, while safeguarding the rights and civil liberties of American citizens.

When it comes to protecting America, we don't belong to a political party) we belong to the red, white, and blue party. We are Americans first.

Mr. President, I am a member of the Intelligence Committee, and like all Members, I take my oath to defend this country against all enemies, foreign and domestic, very seriously. Real threats to our country remain. As we approach the anniversary of September 11, this is a time for more vigilance.

We have two proposals tonight. The Rockefeller-Levin proposal is the most desirable, while the McConnell proposal is also acceptable. These proposals are consistent with the principles that the DNI requested to improve the FISA process.

It enhances intel collection against terrorist operatives communicating overseas foreign to foreign. At the same time, it does provide legal safeguards to protect the rights of Americans, consistent with law. A warrant is still required. I think it is time to vote. I think it is time to protect America.

Mr. REID. Mr. President, I yield Senator WHITEHOUSE 1 minute.

The PRESIDING OFFICER. The Senator from Rhode Island is recognized for 1 minute.

Mr. WHITEHOUSE. Mr. President, the question we face fundamentally here is, are we a nation under the rule of law? A nation of laws or a nation of men? We have heard wonderful things said about Admiral McConnell tonight, and I share this body's admiration for Admiral McConnell. But we are not here judging him, we are here judging a piece of legislation.

The piece of legislation that we are asked to judge puts exclusive rights in the Presidency to determine what gets collected against Americans overseas and what gets collected against Americans in this country who have communications from overseas that are intercepted. And it allows that determination to be made, as was just said, pursuant to a Presidential Executive order.

We are a nation of separated powers. We established the FISA Court to have this authority. The court should oversee those processes. That is what this is about.

The PRESIDING OFFICER. Who yields time?

The Senator from Missouri.

Mr. BOND. Mr. President, I yield the remaining time on this side to the distinguished minority leader.

Mr. McCONNELL. Mr. President, there is one thing I think virtually everybody in the room will agree with, and that is that we can't leave here without a bill signed into law by the President of the United States. There is only one of these proposals before us that he will sign. He indicated earlier today that he will only sign a bill that Admiral McConnell, whom we all profess to greatly respect, believes will get the job done, at least for the next 6 months. There is one proposal which does that, and only one.

So if we don't want to be back here tomorrow and next week still dealing with this problem—and I think we certainly agree we cannot leave town without addressing it—there is only one way to get a Presidential signature, and that is for the Bond-McConnell proposal, upon which we will vote in a moment, to get 60 votes. That is the only way to get the job done. There may be merit in both proposals, but that is not the way Admiral McConnell sees it. He enjoys widespread respect throughout this body. If we want to get the job done and get the President's signature, the Bond-McConnell proposal is the one that should be supported.

I yield the floor.

Mr. REID. I yield back any remaining time.

Mr. McCONNELL. Is there any time remaining on this side?

The PRESIDING OFFICER (Mr. WHITEHOUSE). There is no time remaining.

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

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

Mr. McCONNELL. Mr. President, I ask for the yeas and nays.

The PRESIDING OFFICER. Is there a sufficient second?

There appears to be a sufficient second.

The bill having been read the third time, the question is, Shall the bill pass?

The clerk will call the roll.

The assistant legislative clerk called the roll.

Mr. DURBIN. I announce that the Senator from California (Mrs. BOXER), the Senator from North Dakota (Mr. DORGAN), the Senator from Iowa (Mr. HARKIN), the Senator from South Dakota (Mr. JOHNSON), the Senator from Massachusetts (Mr. KERRY), and the Senator from Washington (Mrs. MURRAY), are necessarily absent.

I further announce that, if present and voting, the Senator from Iowa (Mr. HARKIN) would vote "no."

Mr. McCONNELL. The following Senators are necessarily absent: the Senator from Tennessee (Mr. ALEXANDER), the Senator from Kentucky (Mr. BUNNING), the Senator from New Hampshire (Mr. GREGG), the Senator from Mississippi (Mr. LOTT), the Senator from Indiana (Mr. LUGAR), and the Senator from Arizona (Mr. McCAIN).

Further, if present and voting, the Senator from Tennessee (Mr. ALEXANDER) and the Senator from Kentucky (Mr. BUNNING) would have voted "yea."

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

The result was announced—yeas 60, nays 28, as follows:

[Rollcall Vote No. 309 Leg.]

YEAS—60

Allard	Dole	McConnell
Barrasso	Domenici	Mikulski
Bayh	Ensign	Murkowski
Bennett	Enzi	Nelson (FL)
Bond	Feinstein	Nelson (NE)
Brownback	Graham	Pryor
Burr	Grassley	Roberts
Carper	Hagel	Salazar
Casey	Hatch	Sessions
Chambliss	Hutchison	Shelby
Coburn	Inhofe	Smith
Cochran	Inouye	Snowe
Coleman	Isakson	Specter
Collins	Klobuchar	Stevens
Conrad	Kyl	Sununu
Corker	Landrieu	Thune
Cornyn	Lieberman	Vitter
Craig	Lincoln	Voinovich
Crapo	Martinez	Warner
DeMint	McCaskill	Webb

NAYS—28

Akaka	Brown	Clinton
Baucus	Byrd	Dodd
Biden	Cantwell	Durbin
Bingaman	Cardin	Feingold

Kennedy	Obama	Stabenow
Kohl	Reed	Tester
Lautenberg	Reid	Whitehouse
Leahy	Rockefeller	Wyden
Levin	Sanders	
Menendez	Schumer	
NOT VOTING—12		
Alexander	Gregg	Lott
Boxer	Harkin	Lugar
Bunning	Johnson	McCain
Dorgan	Kerry	Murray

THE PRESIDING OFFICER.

Under the previous order, 60 Senators having voted in the affirmative, the bill, as amended, is passed.

The bill (S. 1927), as amended, is as follows:

S. 1927

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

SECTION 1. SHORT TITLE.

This Act may be cited as the "Protect America Act of 2007".

SEC. 2. ADDITIONAL PROCEDURE FOR AUTHORIZING CERTAIN ACQUISITIONS OF FOREIGN INTELLIGENCE INFORMATION.

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

"CLARIFICATION OF ELECTRONIC SURVEILLANCE OF PERSONS OUTSIDE THE UNITED STATES

"SEC. 105A. Nothing in the definition of electronic surveillance under section 101(f) shall be construed to encompass surveillance directed at a person reasonably believed to be located outside of the United States.

"ADDITIONAL PROCEDURE FOR AUTHORIZING CERTAIN ACQUISITIONS CONCERNING PERSONS LOCATED OUTSIDE THE UNITED STATES

"SEC. 105B. (a) Notwithstanding any other law, the Director of National Intelligence and the Attorney General, may for periods of up to one year authorize the acquisition of foreign intelligence information concerning persons reasonably believed to be outside the United States if the Director of National Intelligence and the Attorney General determine, based on the information provided to them, that—

"(1) there are reasonable procedures in place for determining that the acquisition of foreign intelligence information under this section concerns persons reasonably believed to be located outside the United States, and such procedures will be subject to review of the Court pursuant to section 105C of this Act;

"(2) the acquisition does not constitute electronic surveillance;

"(3) the acquisition involves obtaining the foreign intelligence information from or with the assistance of a communications service provider, custodian, or other person (including any officer, employee, agent, or other specified person of such service provider, custodian, or other person) who has access to communications, 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;

"(4) a significant purpose of the acquisition is to obtain foreign intelligence information; and

"(5) the minimization procedures to be used with respect to such acquisition activity meet the definition of minimization procedures under section 101(h).

"This determination shall be in the form of a written certification, under oath, supported as appropriate by affidavit of appropriate officials in the national security field occupying positions appointed by the President, by and with the consent of the Senate,

or the Head of any Agency of the Intelligence Community, unless immediate action by the Government is required and time does not permit the preparation of a certification. In such a case, the determination of the Director of National Intelligence and the Attorney General shall be reduced to a certification as soon as possible but in no event more than 72 hours after the determination is made.

"(b) A certification 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.

"(c) The Attorney General shall transmit as soon as practicable under seal to the court established under section 103(a) a copy of a certification made under subsection (a). Such certification shall be maintained under security measures established by the Chief Justice of the United States and the Attorney General, in consultation with the Director of National Intelligence, and shall remain sealed unless the certification is necessary to determine the legality of the acquisition under section 105B.

"(d) An acquisition under this section may be conducted only in accordance with the certification of the Director of National Intelligence and the Attorney General, or their oral instructions if time does not permit the preparation of a certification, and the minimization procedures adopted by the Attorney General. The Director of National Intelligence and the Attorney General shall assess compliance with such procedures and shall report such assessments to the Permanent Select Committee on Intelligence of the House of Representatives and the Select Committee on Intelligence of the Senate under section 108(a).

"(e) With respect to an authorization of an acquisition under section 105B, the Director of National Intelligence and Attorney General may direct a person to—

"(1) immediately provide the Government with all information, facilities, and assistance necessary to accomplish the acquisition in such a manner as will protect the secrecy of the acquisition and produce a minimum of interference with the services that such person is providing to the target; 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 that such person wishes to maintain.

"(f) The Government shall compensate, at the prevailing rate, a person for providing information, facilities, or assistance pursuant to subsection (e).

"(g) In the case of a failure to comply with a directive issued pursuant to subsection (e), the Attorney General may invoke the aid of the court established under section 103(a) to compel compliance with the directive. The court shall issue an order requiring the person to comply with the directive if it finds that the directive was issued in accordance with subsection (e) and is otherwise lawful. 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.

"(h)(1)(A) A person receiving a directive issued pursuant to subsection (e) may challenge the legality of that directive by filing a petition with the pool established under section 103(e)(1).

"(B) The presiding judge designated pursuant to section 103(b) shall assign a petition filed under subparagraph (A) to one of the judges serving in the pool established by section 103(e)(1). Not later than 48 hours after the assignment of such petition, the assigned judge shall conduct an initial review of the

directive. If the assigned judge determines that the petition is frivolous, the assigned judge shall immediately deny the petition and affirm the directive or any part of the directive that is the subject of the petition. If the assigned judge determines the petition is not frivolous, the assigned judge shall, within 72 hours, consider the petition in accordance with the procedures established under section 103(e)(2) and provide a written statement for the record of the reasons for any determination under this subsection.

"(2) A judge considering a petition to modify or set aside a directive may grant such petition only if the judge finds that such directive does not meet the requirements of this section or is otherwise unlawful. If the judge does not modify or set aside the directive, the judge shall immediately affirm such directive, and order the recipient to comply with such directive.

"(3) Any directive not explicitly modified or set aside under this subsection shall remain in full effect.

"(i) The Government or a person receiving a directive reviewed pursuant to subsection (h) may file a petition with the Court of Review established under section 103(b) for review of the decision issued pursuant to subsection (h) not later than 7 days after the issuance of such decision. Such court of review shall have jurisdiction to consider such petitions and shall provide for the record a written statement of the reasons for its decision. On petition for a writ of certiorari by the Government or any person receiving such directive, the record shall be transmitted under seal to the Supreme Court, which shall have jurisdiction to review such decision.

"(j) Judicial proceedings under this section shall be concluded as expeditiously as possible. The record of proceedings, including petitions filed, orders granted, and statements of reasons for decision, shall be maintained under security measures established by the Chief Justice of the United States, in consultation with the Attorney General and the Director of National Intelligence.

"(k) All petitions under this section shall be filed under seal. In any proceedings under this section, the court shall, upon request of the Government, review ex parte and in camera any Government submission, or portions of a submission, which may include classified information.

"(l) 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 a directive under this section.

"(m) A directive made or an order granted under this section shall be retained for a period of not less than 10 years from the date on which such directive or such order is made."

SEC. 3. SUBMISSION TO COURT REVIEW AND ASSESSMENT OF PROCEDURES.

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

"SUBMISSION TO COURT REVIEW OF PROCEDURES

"SEC. 105C. (a) No later than 120 days after the effective date of this Act, the Attorney General shall submit to the Court established under section 103(a), the procedures by which the Government determines that acquisitions conducted pursuant to section 105B do not constitute electronic surveillance. The procedures submitted pursuant to this section shall be updated and submitted to the Court on an annual basis.

"(b) No later than 180 days after the effective date of this Act, the court established under section 103(a) shall assess the Government's determination under section 105B(a)(1) that those procedures are reasonably designed to ensure that acquisitions

conducted pursuant to section 105B do not constitute electronic surveillance. The court's review shall be limited to whether the Government's determination is clearly erroneous.

“(c) If the court concludes that the determination is not clearly erroneous, it shall enter an order approving the continued use of such procedures. If the court concludes that the determination is clearly erroneous, it shall issue an order directing the Government to submit new procedures within 30 days or cease any acquisitions under section 105B that are implicated by the court's order.

“(d) The Government may appeal any order issued under subsection (c) to the court established under section 103(b). If such court determines that the order was properly entered, the court shall immediately provide for the record a written statement of each reason for its decision, and, on petition of the United States for a writ of certiorari, the record shall be transmitted under seal to the Supreme Court of the United States, which shall have jurisdiction to review such decision. Any acquisitions affected by the order issued under subsection (c) of this section may continue during the pendency of any appeal, the period during which a petition for writ of certiorari may be pending, and any review by the Supreme Court of the United States.”

SEC. 4. REPORTING TO CONGRESS.

On a semi-annual basis the Attorney General shall inform the Select Committee on Intelligence of the Senate, the Permanent Select Committee on Intelligence of the House of Representatives, the Committee on the Judiciary of the Senate, and the Committee on the Judiciary of the House of Representatives, concerning acquisitions under this section during the previous 6-month period. Each report made under this section shall include—

(1) a description of any incidents of non-compliance with a directive issued by the Attorney General and the Director of National Intelligence under section 105B, to include—

(A) incidents of non-compliance by an element of the Intelligence Community with guidelines or procedures established for determining that the acquisition of foreign intelligence authorized by the Attorney General and Director of National Intelligence concerns persons reasonably to be outside the United States; and

(B) incidents of noncompliance by a specified person to whom the Attorney General and Director of National Intelligence issue a directive under this section; and

(2) the number of certifications and directives issued during the reporting period.

SEC. 5. TECHNICAL AMENDMENT AND CONFORMING AMENDMENTS.

(a) IN GENERAL.—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 “501(f)(1)” and inserting “105B(h) or 501(f)(1)”; and

(2) in paragraph (2), by striking “501(f)(1)” and inserting “105B(h) or 501(f)(1)”.

(b) 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 inserting after the item relating to section 105 the following:

“105A. Clarification of electronic surveillance of persons outside the United States.

“105B. Additional procedure for authorizing certain acquisitions concerning persons located outside the United States.

“105C. Submission to court review of procedures.”

SEC. 6. EFFECTIVE DATE; TRANSITION PROCEDURES.

(a) EFFECTIVE DATE.—Except as otherwise provided, the amendments made by this Act shall take effect immediately after the date of the enactment of this Act.

(b) TRANSITION PROCEDURES.—Notwithstanding any other provision of this Act, any order in effect on the date of enactment of this Act issued pursuant to the Foreign Intelligence Surveillance Act of 1978 (50 U.S.C. 1801 et seq.) shall remain in effect until the date of expiration of such order, and, at the request of the applicant, the court established under section 103(a) of such Act (50 U.S.C. 1803(a)) shall reauthorize such order as long as the facts and circumstances continue to justify issuance of such order under the provisions of the Foreign Intelligence Surveillance Act of 1978, as in effect on the day before the applicable effective date of this Act. The Government also may file new applications, and the court established under section 103(a) of the Foreign Intelligence Surveillance Act of 1978 (50 U.S.C. 1803(a)) shall enter orders granting such applications pursuant to such Act, as long as the application meets the requirements set forth under the provisions of such Act as in effect on the day before the effective date of this Act. At the request of the applicant, the court established under section 103(a) of the Foreign Intelligence Surveillance Act of 1978 (50 U.S.C. 1803(a)), shall extinguish any extant authorization to conduct electronic surveillance or physical search entered pursuant to such Act. Any surveillance conducted pursuant to an order entered under this subsection shall be subject to the provisions of the Foreign Intelligence Surveillance Act of 1978 (50 U.S.C. 1801 et seq.), as in effect on the day before the effective date of this Act.

(c) SUNSET.—Except as provided in subsection (d), sections 2, 3, 4, and 5 of this Act, and the amendments made by this Act, shall cease to have effect 180 days after the date of the enactment of this Act.

(d) AUTHORIZATIONS IN EFFECT.—Authorizations for the acquisition of foreign intelligence information pursuant to the amendments made by this Act, and directives issued pursuant to such authorizations, shall remain in effect until their expiration. Such acquisitions shall be governed by the applicable provisions of such amendments and shall not be deemed to constitute electronic surveillance as that term is defined in section 101(f) of the Foreign Intelligence Surveillance Act of 1978 (50 U.S.C. 1801(f)).

Mr. BOND. Mr. President, I move to reconsider the vote.

Mrs. FEINSTEIN. I move to lay that motion on the table.

The motion to lay on the table was agreed to.

VOTE ON S. 2011

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

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

Mr. DURBIN. Mr. President, I ask for the yeas and nays.

The PRESIDING OFFICER. Is there a sufficient second? There is a sufficient second.

The bill having been read the third time, the question is, Shall the bill pass?

The clerk will call the roll.

Mr. DURBIN. I announce that the Senator from California (Mrs. BOXER), the Senator from North Dakota (Mr.

DORGAN), the Senator from Iowa (Mr. HARKIN), the Senator from South Dakota (Mr. JOHNSON), the Senator from Massachusetts (Mr. KERRY), and the Senator from Washington (Mrs. MURRAY) are necessary absent.

Mr. McCONNELL. The following Senators are necessarily absent: the Senator from Tennessee (Mr. ALEXANDER), the Senator from Kentucky (Mr. BUNNING), the Senator from New Hampshire (Mr. GREGG), the Senator from Mississippi (Mr. LOTT), the Senator from Indiana (Mr. LUGAR), and the Senator from Arizona (Mr. MCCAIN).

Further, if present and voting, the Senator from Tennessee (Mr. ALEXANDER) and the Senator from Kentucky (Mr. BUNNING) would have voted “nay.”

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

The result was announced—yeas 43, nays 45, as follows:

[Rollcall Vote No. 310 Leg.]

YEAS—43

Akaka	Feingold	Nelson (NE)
Baucus	Feinstein	Obama
Bayh	Inouye	Reed
Biden	Kennedy	Reid
Bingaman	Klobuchar	Rockefeller
Brown	Kohl	Salazar
Byrd	Landrieu	Sanders
Cantwell	Lautenberg	Schumer
Cardin	Leahy	Stabenow
Carper	Levin	Tester
Casey	Lincoln	Webb
Clinton	McCaskill	Whitehouse
Conrad	Menendez	Wyden
Dodd	Mikulski	
Durbin	Nelson (FL)	

NAYS—45

Allard	DeMint	McConnell
Barrasso	Dole	Murkowski
Bennett	Domenici	Pryor
Bond	Ensign	Roberts
Brownback	Emzi	Sessions
Burr	Graham	Shelby
Chambliss	Grassley	Smith
Coburn	Hagel	Snowe
Cochran	Hatch	Specter
Coleman	Hutchison	Stevens
Collins	Inhofe	Sununu
Corker	Isakson	Thune
Cornyn	Kyl	Vitter
Craig	Lieberman	Voinovich
Crapo	Martinez	Warner

NOT VOTING—12

Alexander	Gregg	Lott
Boxer	Harkin	Lugar
Bunning	Johnson	McCain
Dorgan	Kerry	Murray

The PRESIDING OFFICER. Under the previous order, 60 Senators not having voted in the affirmative, the bill is placed on the calendar.

The majority leader.

Mr. REID. I move to reconsider the vote, and I move to lay that motion on the table.

The motion to lay on the table was agreed to.

UNANIMOUS-CONSENT REQUEST—H.R. 1495

Mr. REID. Mr. President, I ask unanimous consent that at a time to be determined by the majority leader, following consultation with the Republican leader, the Senate proceed to the consideration of the conference report to accompany H.R. 1495, WRDA; that it