CALLING FOR INVESTIGATION OF THE FOREIGN CONTRACT LOOPHOLE REGARDING FRAUD

(Mr. WELCH of Vermont asked and was given permission to address the House for 1 minute and to revise and extend his remarks.)

Mr. WELCH of Vermont. Mr. Speaker, there's a new regulation that was in the process of being promulgated that did a practical and sensible thing for taxpayers: it required contractors who receive over $5 million of taxpayer money to report fraud when they are aware it happened.

At the last minute, there was an exemption that was put in so that foreign contracts were not subject to taxpayer protection. That makes no sense and flies in the face of reason.

By exempting overseas contracts, and this is Iraq and Afghanistan particularly, the Bush administration is sending an unambiguous message: it's okay to rip off taxpayers when you spend money abroad; just don't do it at home.

Not only must we stop this reckless rule, but we must have answers: What was the rationale for the loophole? How did the loophole get slipped into the proposed rule? And who advocated for it?

Through a thorough investigation, we will stop this rule and get some answers.

THE SAVE ACT

(Mrs. DRAKE asked and was given permission to address the House for 1 minute and to revise and extend her remarks.)

Mrs. DRAKE. Mr. Speaker, I rise today to call attention to one issue that I believe we all agree on, and that is the safety and security of American citizens.

Our Nation's borders are our first line of defense. The first step in any immigration plan is to provide for a secure and impenetrable border.

I have introduced a discharge petition on Representative HEATH SHULER's bill, the SAVE Act, which provides a clear, three-point plan to get tough on illegal immigration. The plan is simple:

Increased secured security along our borders, mandatory worksite enforcement, and greater interior enforcement.

This issue deserves debate, and I am proud to reach across the aisle to work with Mr. SHULER on this bipartisan bill. I urge all of my colleagues to join me and Mr. SHULER and sign this bipartisan petition before you leave today.

It's time to demonstrate that Congress is serious about illegal immigration. The American people expect and deserve our quick and complete attention to securing our borders and protecting our Nation.

□ 1015

THE TOOLS ARE IN PLACE TO PROTECT NATIONAL SECURITY

(Mr. PALLONE asked and was given permission to address the House for 1 minute.)

Mr. PALLONE. Mr. Speaker, the White House and congressional Republicans continue to play games with our Nation's national security. Rather than working with us to modernize the Foreign Intelligence Surveillance Act, Republicans insist that this House simply rubber-stamp a bill that passed the Senate earlier this year.

House Democrats refuse to do that. Instead, just as we did last November, we will bring a balanced bill to the floor today that gives our intelligence community the tools it needs to track terrorists and prevent another attack while also protecting the constitutional rights of innocent Americans.

We believe this approach produces the best results for our intelligence community, and that is why we refuse to simply rubber-stamp the Senate bill.

Mr. Speaker, when House Republicans allowed the President's Protect America Act to expire last month, they did so knowing that all of the authorities granted the intelligence community in that act would be in place until this summer. We had time to get this legislation right, and today we intend to pass a strong compromise bill that should garner support on both sides of the aisle.

SAVE ACT

(Mr. MCHENRY asked and was given permission to address the House for 1 minute.)

Mr. MCHENRY. Mr. Speaker, when a dam breaks, the first action you must take is to stop the flow, to plug the hole. And the same rule applies to illegal immigration.

There are as many as 15 to 20 million illegal aliens in this country today, and we realize the dam is broken. To fix it, we have got to start with border security and enforcement first.

The SAVE Act, which helps fix the dam by hiring 8,000 more border guards and using military equipment for border security, is a good bill. By strengthening workplace enforcement, it dries up easy access to American jobs and stems the tide of illegal immigration.

Despite broad bipartisan support, and even a Democrat sponsor of this bill, the liberal leadership of this House won't bring this up for a vote because they prefer amnesty and government tax dollar giveaways, not real border security.

I ask them to stop playing political games with our immigration policy and with our national security and bring this bill up for a vote.

FISA AMENDMENTS ACT OF 2008

Mr. ARCURI. Mr. Speaker, by direction of the Committee on Rules, I call up House Resolution 1041 and ask for its immediate consideration.

The Clerk read the resolution, as follows:

H. RES. 1041

Resolved, That upon adoption of this resolution it shall be in order to take from the Speaker's table the bill (H.R. 3773) to amend the Foreign Intelligence Surveillance Act of 1978 to establish a procedure for authorizing certain acquisitions of foreign intelligence, and for other purposes, with the Senate amendment thereto, and to consider in the House, without intervention of any point of order except those arising under clause 10 of rule XXI, a motion offered by the chairman of the Committee on the Judiciary or his designee that the House concur in the Senate amendment with the amendment printed in the report of the Committee on Rules accompanying this resolution. The Senate amendment and the motion shall be considered as read. The motion shall be debatable for one hour, with 40 minutes equally divided and controlled by the chairman and ranking minority member of the Committee on the Judiciary and 20 minutes equally divided and controlled by the chairman and ranking minority member of the Permanent Select Committee on Intelligence. The previous question shall be considered as ordered on the motion to its adoption without intervening motion.

SEC. 2. During consideration of the motion to concur pursuant to this resolution, notwithstanding the operation of the previous question, the Chair may postpone further consideration of the motion to such time as may be designated by the Speaker.

The SPEAKER pro tempore (Mr. PASTOR). The gentleman from New York is recognized for 1 hour.

Mr. ARCURI. Mr. Speaker, for purposes of debate only, I yield the customary 30 minutes to the gentleman from Washington (Mr. HASTINGS). All time yielded during consideration of the rule is for purpose of debate only.

GENERAL LEAVE

Mr. ARCURI. Mr. Speaker, I ask unanimous consent that all Members have 5 legislative days within which to revise and extend their remarks and insert extraneous material into the RECORD.

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

There was no objection.

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

Mr. Speaker, House Resolution 1041 provides for consideration of the Senate amendment to H.R. 3773, the FISA Amendments Act of 2008. The rule makes in order a motion offered by the chairman of the Judiciary Committee to concur in the Senate amendment with the amendment printed in the Rules Committee report on this resolution.

Mr. Speaker, we have come a long way on the crucial issues of intelligence-gathering. I commend Chairmen CONYERS and REYES for their diligence in providing much-needed attention in evaluation of FISA, while ensuring that we provide our Nation's intelligence community with the necessary tools and resources to prevent a future terrorist attack on our Nation.

Over the last few weeks, my office phone lines have been burning up with calls from constituents regarding FISA and the need for Congress to take action. Unfortunately, the calls were prompted by a far-reaching misinformation campaign aimed to scare the public into believing that the House majority is in some way prohibiting our Nation's intelligence community from monitoring the terrorists. Nothing could be further from the truth. Not only are these claims false, they are unconscionable.

I don't believe any Member of this institution, Republican or Democrat, wants to shackle our Nation's intelligence community from preventing another terrorist attack. Frankly, I am getting alarmed by the claims by some of my colleagues. For the last couple of weeks, we have heard only one message from the other side of the aisle: take up the Senate bill because it has the support of the President. I have no interest in being a rubber stamp for this administration, nor of any elected body, even the Senate. That is not why I was sent to Congress. I certainly mean no disrespect to the Senate, but my constituents sent me to Congress to use my judgment and conscience to help govern.

The chairman of the Judiciary Committee said it best earlier in the week during our Rules Committee hearing when he said we are not an appendage of the Senate. I couldn't agree with Mr. CONYERS more. It is our responsibility to the American people to exercise our legislative duty. Furthermore, with an issue like FISA and intelligence-gathering, I am confident that the American people would expect the House to exercise that duty to the fullest extent possible.

We are a bicameral form of government. The changes we are proposing to the Senate bill today represent a powerful step forward in the legislative process. The administration has made it overwhelmingly clear that they need to use electronic surveillance to track and identify terrorist targets. And despite the misinformation campaign and the rhetoric, the proposal we will vote on today makes it easier for our Nation's intelligence community to wiretap suspected terrorists by explicitly not requiring a court order to wiretap targets believed to be outside the United States. In addition, the proposal provides for surveillance of terrorists and other targets overseas who may be communicating with Americans.

And we are all well aware of the issue of immunity for telecom companies. It seems like that is all we have talked about here for the past several months. As a former prosecutor, I can say from experience and without hesitation, you never provide immunity to anyone unless you are sure whom you are giving the immunity to and why you are giving the immunity out.

One point that has not received enough emphasis over the last few weeks is that the telecom companies have immunity under current law. However, the problem is that anytime a telecommunication company goes to court, this administration steps in and says this is classified material and the question is deemed state secret, and therefore you are not allowed to talk about it. In that way, the telecom companies are not allowed to even defend themselves, but rather have to sit there and answer for any charges civilly made against them.

I, for one, couldn't agree more that if the intelligence community goes to a telecom company with adequate authorization and says, We need communication records for person X because he or she is believed to be a terrorist, the telecom company deserves to be afforded that protection. Unfortunately, we have absolutely no idea what the administration requested and what the telecom companies have provided.

Our proposal provides a commonsense, balanced approach to address the immunity issue. We want to provide the telecom companies with a legal way to present their defense in a secure proceeding and in a secure way in district court without the administration asserting state secret privileges to block those defenses.

And, again, don't be fooled by the misinformation campaign. We are not talking about broadcasting the content of those defenses over the public airwaves, rather just the opposite will be done in camera and in secret. This would involve ex parte proceedings in camera. That is one-on-one telecom company and a Federal district court judge behind closed doors. That way, the determination of whether or not the classified material is, in fact, a state secret is made by a neutral third party and not just this administration.

Finally, our proposal establishes a bipartisan national commission with subpoena power to investigate and report to the American people on the administration's warrantless surveillance activities and to recommend procedures and protections for the future in much the same way that the 9/11 Commission did.

Mr. Speaker, we must bring the misinformation campaign and partisan wrangling to an end. There is no question that there are groups and individuals out there who seek to do us harm. There is no question that my colleagues and I want to give the people who protect us from the danger every tool they need to keep fighting terrorism. The proposal we will vote on today will, in fact, provide our Nation's intelligence community with the resources to prevent future acts of terrorism while protecting the freedoms of the citizens under the Constitution. Everyone in this body wants the same thing, and that is to protect American citizens. This bill does exactly that.

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

Mr. HASTINGS of Washington. Mr. Speaker, I yield myself as much time as I may consume.

(Mr. HASTINGS of Washington asked and was given permission to revise and extend his remarks.)

Mr. HASTINGS of Washington. Mr. Speaker, I want to thank my friend from New York (Mr. ARCURI) for yielding me the customary 30 minutes, which I must note, Mr. Speaker, is more time than the entire House Intelligence Committee will be permitted to debate the legislative proposal covered by this rule. The Democrat Rules Committee is allowing just 20 minutes for the members of the Select Committee on Intelligence to debate this Democrat FISA proposal.

What is at stake is the safety and security of our Nation to protect us against foreign terrorists threats by modernizing the 1970s electronic surveillance law. The issue before the House is no less than our intelligence community's ability to protect American citizens by monitoring foreign terrorists communicating in foreign places. But the respective members of the Intelligence Committee are to be given only 20 minutes to debate this issue.

It appears that Democrat leaders are not content with their record of the most closed rules in the history of the U.S. House of Representatives in shutting down every Member from being permitted to offer amendments on the House floor. So now they are going so far as to restrict the time the House is even permitted to debate bills that they are trying to ram through this body.

Mr. Speaker, since the new Democrat majority took control of the House Rules Committee last January a year ago, they have approved rules that allow other committees far more time to debate matters of far less importance than FISA. For example, H. Res. 214 provided a rule allowing the Transportation Committee 1 hour of floor debate on legislation to ''authorize appropriations for sewer overflow control grants.''

H. Res. 269 gave the Financial Services Committee 1 hour to debate housing assistance for Native Hawaiians.

H. Res. 327 gave an hour to the Science and Technology Committee to discuss scholarships for math and science teachers.

H. Res. 331 gave the Resources Committee 1 hour of time, not just 20 minutes, but 1 hour of time to debate restoring the ''prohibition on the commercial sale and slaughter of wild free roaming horses and burros.''

Mr. Speaker, I believe my colleagues on the other side of the aisle care sincerely about the security of our country and our fellow citizens. But I fail to understand how it could be justified to allow more House floor time to debate overflowing sewers and the killing of wild burros than the members of the Intelligence Committee are allowed today to discuss the urgent needs of FISA.

The answer is that Democrat leaders are working overtime to block the

House from voting on a bipartisan compromise bill that has passed the Senate by a vote of 68–29. The bill passed the Senate over a month ago, and on February 12, the Democrat leaders refused to allow the House to even vote on that measure.

Twenty-one Blue Dog Democrats sent a letter to Speaker PELOSI at the end of January declaring their support for the Senate FISA bill. But there still hasn't been a vote. Mr. Speaker, I submit for the RECORD that letter.

CONGRESS OF THE UNITED STATES,
Washington, DC, January 28, 2008.

DEAR MADAM SPEAKER: Legislation reforming the Foreign Intelligence Surveillance Act (FISA) is currently being considered by the Senate. Following the Senate's passage of a FISA bill, it will be necessary for the House to quickly consider FISA legislation to get a bill to the President before the Protect America Act expires in February.

It is our belief that such legislation should include the following provisions:

Require individualized warrants for surveillance of U.S. citizens living or traveling abroad;

Clarify that no court order is required to conduct surveillance of foreign-to-foreign communications that are routed through the United States;

Provide enhanced oversight by Congress of surveillance laws and procedures;

Compel compliance by private sector partners;

Review by FISA Court of minimization procedures;

Targeted immunity for carriers that participated in anti-terrorism surveillance programs.

The Rockefeller-Bond FISA legislation contains satisfactory language addressing all these issues and we would fully support that measure should it reach the House floor without substantial change. We believe these components will ensure a strong national security apparatus that can thwart terrorism across the globe and save American lives here in our country.

It is also critical that we update the FISA laws in a timely manner. To pass a long-term extension of the Protect America Act, as some may suggest, would leave in place a limited, stopgap measure that does not fully address critical surveillance issues. We have it within our ability to replace the expiring Protect America Act by passing strong, bipartisan FISA modernization legislation that can be signed into law and we should do so—the consequences of not passing such a measure could place our national security at undue risk.

Sincerely,

Leonard Boswell, Marion Berry, Mike Ross, Bud Cramer, Heath Shuler, Allen Boyd, Dan Boren, Jim Matheson, Lincoln Davis, Tim Holden, Dennis Moore, Christopher Carney, Earl Pomeroy, Melissa Bean, Joe Baca, John Tanner, Jim Cooper, Brad Ellsworth, Charlie Melancon, Zack Space.

When the Rules Committee met to discuss this bill on Wednesday, several of my Democratic colleagues argued that the House shouldn't have to give in to a my-way-or-the-highway or take-it-or-leave-it approach when it comes to the bipartisan Senate bill.

I agree with my colleagues, Mr. Speaker. No Member of this House should ever vote for legislation that they can't support. Members have the right to vote their conscience. But, Mr. Speaker, simply allowing the House to vote on a bipartisan FISA bill doesn't force any Members to vote against his or her will. It just gives them an opportunity to vote on a bill that has passed the other body overwhelmingly.

□ 1030

It is the Democrat leaders and a liberal minority amongst that party who are telling the rest of the House that it's their way or no way. For days and weeks, they've refused the call of the 21 Blue Dog Democrats for the House to act in the name of our Nation's security. Democrat leaders are standing in the way of letting the House vote and work its will because they fear a majority of this body will actually approve the Senate bill.

Mr. Speaker, today, every Member of the House is going to have a chance to vote and to allow the bipartisan Senate language to pass this House. Let me be very clear what I intend to do when the previous question is moved, because this will not be the ordinary motion. I will amend just one clause of the rule, that is, section 2, so that the section will then read, and I quote: Upon rejection of the motion to concur specified in section 1, a motion that the House concur in the Senate amendments to H.R. 3773 is hereby adopted.

What does that mean? What this means is that by voting ''no'' on the previous question, the rule will be amended in such a way that continues to allow the House to debate and vote on the proposal that's offered by the Democrats today. But if the House Democrat proposal fails, then the bipartisan Senate FISA bill is then agreed to by the House. So we will have the vote on the Democrats' partisan FISA bill presented to us today, but if the vote on the Democrat FISA bill fails, then the games stop right there and the Senate bill goes to the President for his signature. There's no more stalling, Mr. Speaker, no more posturing.

It's time for the House to stand up and vote and get on with the business of protecting America.

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

Mr. ARCURI. Mr. Speaker, it just seems to me that this debate is becoming more and more political rather than focusing on what we're here to do, and that is to ensure that the people of this country have absolutely the best FISA bill that they can, a bill that not only protects us but ensures that the Constitution is protected as well. That's what this FISA bill does. It takes the best of all the things that we have been trying to achieve over the past several months and incorporates it into a bill, including unshackling the telecom companies so that if they have done what has been asked of them and what is permitted to do under the law, that they are allowed immunity. We certainly don't want to prosecute people who have been trying to help our country and keep our country safe. Nonetheless, this puts into effect the important factors of ensuring that those things are done.

With that, Mr. Speaker, I would like to yield 2½ minutes to the gentleman from Pennsylvania (Mr. SESTAK).

Mr. SESTAK. Mr. Speaker, I was assigned to the Pentagon the day 9/11 happened. It was very obvious, sitting there at dead center, that the world had changed. We in the military used to like away games. We liked our wars over there. Suddenly we had a home game and things had to change.

A few days later, I was appointed to be head of the Navy's antiterrorism unit. Shortly after that, I was on the ground in Afghanistan flying in with a fellow from the CIA with a suitcase filled with millions of dollars. I wanted the best insurance, the best intelligence. But I felt I always had that because I had worked at the National Security Council, where in counterproliferation and antiterrorism efforts there, I was able to see that whether it had been President Reagan, President Clinton, or the first President Bush, FISA provided that ability.

I like this bill. It is very similar to the Senate bill. If someone in Saudi Arabia is talking to someone in Germany and it routes to the United States, we can listen in without asking questions.

I remember being in the White House and being frustrated, because if somebody was doing proliferation of weapons of mass destruction, we couldn't, under FISA, get a warrant for them. This bill fixes that.

And then I step back in emergencies. This bill fixes it in an emergency situation that you don't even have to ask permission; you can just do it. And it extends from 3 days of having to come to the court till 7 days. And then even if the court takes another 30 days, keep listening. Thank you for that.

But the real differences come down to what I think is important, because every day I was out there for 31 years in the military, I wasn't just fighting an enemy or trying to deter him; I was fighting for an ideal, the ideal of which America is founded upon, the rights of civil rights. Therefore, I honestly believe what we have done in the telecommunications companies and discussing immunity should be done by the proper branch of government, the judicial branch, a court, the FISA Court. Then if everything was not awry, then we can say, under the provisions of the previous law, they have immunity.

And then I would like to also point out that it is very important to me that we have oversight on reports that are coming, and they must come to the FISA Court to explain the procedures they will follow. That type of oversight is what I followed for. In short, I will never forget being over there in charge of my carrier battle group, fighting in Afghanistan, that what I was fighting for was security, number one, properly balanced with civil rights. This bill

does do that. I wouldn't vote for it any other way unless it did.

Mr. HASTINGS of Washington. Mr. Speaker, I am pleased to yield as much time as he may consume to the distinguished ranking member of the Rules Committee, the gentleman from California (Mr. DREIER).

Mr. DREIER. Mr. Speaker, I thank my friend for yielding and I appreciate his fine work.

It's no secret that there is a lot of controversy surrounding this issue of modernization of the Foreign Intelligence Surveillance Act and everything that surrounds our effort to successfully prosecute this war on terror. We know that sacrifices have been made. We know that sacrifices continue to be made. And we're all very committed to the civil liberties of every single American. That's why I'm convinced that we are not going to take actions which will in any way undermine the civil liberties of our fellow Americans.

It is very important to note, Mr. Speaker, that as we look at this issue, there is a great deal of bipartisanship that exists. Unfortunately, it's not in this body. And I recognize that as the people's House we have a unique responsibility and we should not in any way become a rubber stamp for action taken by the other body. But I will say this. As we look at bipartisanship, it extends beyond our colleagues in the United States Senate. It does exist right here in the House, in that 21 Democrats signed a letter to the Speaker and made the specific request that we have a chance to vote on the proposal that is, in fact, the bipartisan compromise that did emerge from the Senate. We also have had a bipartisan group of attorneys general across the country who have indicated that they very much believe that we should proceed with taking the action that is embodied in that bipartisan compromise that has emerged from the Senate.

And, Mr. Speaker, I think one of the most important things that we should note is not simply bipartisanship but something that clearly transcends any kind of politics or partisanship, and that is the words that come from the Director of National Intelligence, Mike McConnell. And when I say that he transcends partisanship, I would like to remind our colleagues that this is a man who has spent four decades of his life working in the intelligence field. He was the head of the National Security Agency for President Bill Clinton, and he now serves as the Director of National Intelligence.

In testimony before the Judiciary Committee, he referred to the fact that there has been a 66 percent reduction, a two-thirds reduction in the amount of information that they need, that they should be able to glean in the intelligence area. And he has said that in his discussions and negotiations with those in the telecommunications industry that they will not be able to continue as they have in the past to help us prosecute this war if they don't have this immunity.

Now, Mr. Speaker, I think that one of the things that we in this debate on the rule are saying is that, let's just allow a vote on that bipartisan compromise, the so-called Rockefeller-Bond bill that emerged from the Senate. Sixty-eight Democrats and Republicans came together and agreed on it. And we had an interesting Rules Committee meeting, Mr. Speaker, in which we simply said, okay, we're going to have a chance to vote on the measure that will emerge from the majority, but why if as my very dear friend, the chairman of the Committee on the Judiciary, Mr. CONYERS said, he said he wanted there to be an exchange of ideas, if there's going to be an exchange of ideas, let's at least allow our colleagues to have an up-or-down vote on that bipartisan compromise which embodies the above-partisan recommendations of the Director of National Intelligence, the bipartisan recommendations of the attorneys general across the country and simply say that we should have a chance to vote on it. It's very unfortunate that this rule denies Members of the House of Representatives the opportunity to have that vote.

Mr. Speaker, I urge my colleagues to vote down this rule. We need to defeat this rule so that we can in fact have a package that will allow us to do everything we need as we pursue our very, very important responsibility, and that is to secure our Nation.

Mr. ARCURI. Mr. Speaker, I would like to yield 2 minutes to the gentleman from New Jersey, a member of the Intelligence Committee, Mr. HOLT.

Mr. HOLT. Mr. Speaker, I thank the gentleman, and I am pleased to rise to say that not only do we have enough time to debate this, but we have a very good, well-structured bill in front of us.

It is an important role of the Federal Government to look after the safety and the security of the American people. This bill does that. It is a well-structured bill that gives telecom companies the opportunity they have asked for to defend themselves in court. It provides for a congressional commission that will look at how electronic surveillance has been conducted and will make recommendations. It includes a reasonable expiration date to keep Congress involved in the oversight of this. And I would argue most importantly this legislation provides prior involvement of the court in all intercepts of communications of Americans. Critically important.

Here are the facts. This bill gives our intelligence community the flexibility they need to collect information on our enemies while protecting the American people in every aspect. And it mandates extensive reviews and reporting requirements on the electronic surveillance programs in question. It rejects the President's efforts to redefine the relationship between the people and their government, a very key point.

I commend the Speaker, the leader, the Chair of the Judiciary Committee, the Chair of the Intelligence Committee for negotiating with a firm tone and a principled approach to give us very good legislation, a very good bill despite the fact that they've had to work with the relentless drumbeat of propaganda and disinformation orchestrated by the administration in this matter. I commend them for producing such good legislation in such difficult circumstances.

Mr. HASTINGS of Washington. Mr. Speaker, may I inquire how much time remains on both sides.

The SPEAKER pro tempore. The gentleman from Washington has 19½ minutes. The gentleman from New York has 18 minutes.

Mr. HASTINGS of Washington. Mr. Speaker, I am pleased to yield 5 minutes to the gentleman from California (Mr. ROYCE).

□ 1045

Mr. ROYCE. I thank the gentleman.

Mr. Speaker, I am rising to oppose the rule. As I think you know, we are going to end up in a circumstance here, according to our Director of National Intelligence, where, for the first time, frankly, this refusal to protect our telecom companies, who face some 40 lawsuits and billions of dollars, our refusal to allow for the protection for them to defend themselves will end up stopping the intelligence professionals from conducting surveillance of foreign persons in foreign countries. It's really because they cannot read the minds of their terrorist targets and guarantee that they would not call the United States or one of their people in the United States.

Unfortunately, sometimes they do. Mahmood Karimi came into this country in the trunk of a car over the border of Mexico after paying $5,000. He was the brother, by the way, of the Hezbollah general in southern Lebanon who launched the attacks there.

I was in Haifa in August, and the Prime Minister of Israel, by the way, told me that one of his great concerns was the advantages that had been given up and the knowledge that had now become known to the terrorists. He said one of the reasons we are having such difficulty with Hezbollah is because they now know how the United States, how other countries were able to apprehend the information before these attacks came.

But in any event, the brother of the individual who was launching those attacks some years ago actually came into the United States. I am certain somehow he got phone calls out of Beirut, and I am sorry if we violated his constitutional rights. I know there is the assumption that once a foreign agent from a foreign country is in this country, we don't have the right to monitor and violate his civil rights.

Here is what I do know about this individual: I know that he did manage to get through our southern border in my State. I know that somehow we apprehended him up in Detroit. I know that

once we did, we found 50 of his cohorts who were part of the Hezbollah cell.

Now, I am not making the allegation that we used this kind of intelligence in order to apprehend him, because, frankly, I don't know how we apprehended him. I only give you that example to say these are the types of individuals who are operating. He was trained by Iran; he was trained by foreign intelligence. He was here in the United States, and I imagine in one case out of 1,000, when someone is trying to make a phone call from Beirut to their agent, let's say in Syria, occasionally that call might come into the United States because there might be a foreign agent here.

The point I want to make is that this is, frankly, more protection than Americans get under court-ordered warrants in Mob and other criminal cases. The issue we are debating, frankly, is pretty important. It's an issue of life and death, frankly, as far as I am concerned.

I serve as the ranking member of the Terrorism and Nonproliferation Subcommittee. That there have not been attacks on our soil since 9/11 is due to the improved surveillance in real-time that we are able to conduct against foreign terrorists.

Now, that good record in no way should lead us to discount the jihadists, because the image of Osama bin Laden's allies operating in some remote terrain somewhere may give the impression that our foes are isolated. I want to share with you, because of the Internet our foes are not isolated. We are confronting a virtual caliphate. Radical jihadists are physically disbursed, but they are united through the Internet. They use the tool there to recruit and plot their terrorist attacks. They use electronic communications for just such a purpose, and they are very sophisticated in that use.

How has the West attempted to confront that? Well, the British used Electronic surveillance in real-time and they used it last year to stop the attack on 10 transatlantic flights. They prevented that attack a year ago by wiretapping. The French authorities used wiretaps to lure jihadists basically into custody and prevented a bomb attack.

Given this threat, it is unfathomable that we would weaken our most effective preventive tool. That's exactly what this bill does, in the opinion of Admiral McConnell, whose job it is to protect our security. Admiral McConnell said that we are actually missing a significant portion of what we should be getting. Now, he has served both Democratic and Republican administrations with distinction.

I would ask those so distrustful, go ahead, discount his estimate, cut them in half, say we lose one-third of our intelligence as a result of this bill passing and the problems that we foment with telecom companies around the world. I would argue that is too much to give up. I don't want to lose a single percent of our intelligence on terrorist communications. With nuclear and biological material floating around the globe, we don't have that margin of error.

Mr. ARCURI. I thank the gentleman from California. I just want to assure him that I think I speak for the entire Democratic Caucus when I say that we share his concern for the safety of this country.

However, when he speaks about things that just blatantly aren't true, for some reason, and I don't know if it's an attempt to frighten the American people, it's troubling. This bill, this FISA bill, allows the government to wiretap any foreign national, whether they are overseas or they are here. This is just blatantly untrue. What he says about the fact is that we cannot wiretap, we can't monitor a person that comes to this country who is a foreigner. It's just blatantly untrue. This FISA bill allows that to happen.

It's somewhat disheartening when people mention facts that just aren't true, and I certainly hope it's not for political reasons; but let's stick to the facts, because the facts are clearly that this bill allows that to happen.

I yield 2½ minutes to the gentlewoman from Texas, a member of the Judiciary Committee, Ms. JACKSON-LEE.

(Ms. JACKSON-LEE of Texas asked and was given permission to revise and extend her remarks.)

Ms. JACKSON-LEE of Texas. Mr. Speaker, I imagine that Admiral McConnell is watching and listening, and so allow me this morning to thank all of the patriots that are stationed around the world that are the front lines of the national security and defense and intelligence community of this Nation. To the American people, let me say on your behalf, we thank them, for they are working every day, and they are working diligently, and they are being successful.

This rule today supporting the underlying bill should be passed, because Admiral McConnell is aware that every single tool that he has asked for, foreign-to-foreign and otherwise in terms of surveillance, is in this bill.

Interestingly enough, if you will talk to members of the law enforcement community and those who are dealing with terrorists, they will tell you that they are intercepting terrorists. They are finding terrorists every single day. I personally spoke to law enforcement who noted in one region of the country that they have intercepted three terrorists. So what we are doing today is providing the codified document to secure your civil liberties, to suggest that if the focus of your surveillance is actually an American, they have to have a court intervention, a quick court intervention.

As it relates to our telecom companies, is anyone suggesting that they are not patriots? Is anyone suggesting that they will not comply with a request by the national security community?

They will, because in this bill it indicates to them that if they get a letter that suggests that we need their help, that they are not breaking the law, that all of the laws have been in compliance certified by the AG, they get absolute immunity.

So going forward, there will be no question. If that happened in the past, they have absolute immunity. There will be no gaping hole, and the idea of avoiding retroactive immunity is a question to America. It is protecting your civil liberties. Yes, we have been secure, or we have avoided a tragedy since 9/11. It is because we have given them the tools, and now we give them better tools.

It is important to pass this legislation, because it advances the security of America. But what it says to the world is that we are not terrorized by the terrorists. We believe in security, but we believe in the civil liberties of all Americans.

The Constitution still stands.

Mr. Speaker, I rise today in support of the H. Res. 1041, Providing for Consideration of the Senate Amendment to H.R. 3773, the Foreign Intelligence Surveillance Act (FISA) Amendments Act. This Rule will allow us to examine the Senate Amendment and to consider the many concerns associated with this act.

We have worked as a body to resolve our issues with FISA and with those of our Senate colleagues without eviscerating the fundamental rights embodied in the Bill of Rights. Leadership has worked tirelessly to not simply reconcile the Senate language with the RESTORE Act (H.R. 3773), which we passed in the House on November 15, 2007, but leadership has also worked tirelessly to go beyond the RESTORE Act. This current FISA Reform legislation has been borne out of this tireless struggle. Let me detail some of the ways that the FISA Reform Act balances security and liberty: adopting provisions from the Senate bill that will for the first time provide statutory protections for U.S. persons overseas, that ensures surveillance of their communications are conducted through the courts; and providing a mechanism for telecommunications carriers to prove their case that they did not engage in any wrongdoing and to guarantee due process with a fair hearing in court.

Like the RESTORE Act, the FISA reform legislation provides for collection against terrorist organizations such as Al Qaeda, while providing prior court approval of acquisition and an on-going process of review and oversight in order to protect Americans' privacy.

The FISA Reform Act creates a bipartisan commission on Warrantless Electronic Surveillance Activities with strong investigatory powers in order to preserve the rule of law in pending and future lawsuits. This revised version of the bill reiterates FISA's exclusive control for conducting foreign intelligence surveillance, unless a specific statutory authorization for surveillance is enacted. This is an area where the House version has differed from the Senate.

Perhaps the most important distinction between the House version of the bill and the Senate's version is that the Court must approve surveillance procedures prior to the start of surveillance. Under the Senate bill, the Director of National Intelligence and the Attorney

General authorize surveillance and submit procedures to the FISA Court 5 days after surveillance begins. Under the Senate bill, the FISA Court has no firm deadline for approving the procedures. The Senate bill does not go far enough in protecting the individual rights of Americans.

The FISA Reform Act requires submission to Congress and the FISA Court of ''reverse targeting'' guidelines that are to be promulgated by the NSA. Specifically, these guidelines will determine whether the ''significant purpose'' of the surveillance is to acquire communications of a specific U.S. person. In this regard, the House bill gives more teeth to the provisions in the Senate bill, which only has general prohibitions against reverse targeting and does not require the promulgation of agency guidelines addressing reverse targeting.

Both the FISA Reform Act and the Senate bill, provide for prospective liability protection for telecommunications companies that assist with lawful surveillance activities. However, the FISA Reform Act goes further by ensuring that telecommunication companies complying with the Protect America Act (PAA) have liability protection for lawful surveillance that occurred after the expiration of the PAA.

Another major difference between the bills is that the FISA Reform Act does not provide for any retroactive immunity. Instead, the FISA Reform Act provides for a process to allow district courts to review classified evidence in camera and ex parte (in front of the judge without the presence of the plaintiff). This allows the telecommunications companies to have their day in court and to assert defenses that already exist under FISA and other statutes. This process simply creates a pathway for companies to assert such defenses.

This process, which allows the Court to review information and the companies to prove their case, prevents the Executive Branch from blocking the companies from asserting their defenses under the doctrine of ''state secrets'' privilege. The FISA Reform Act permits the telecommunication companies an opportunity to defend themselves but does not create any new defenses or immunity and it does not excuse any conduct that may have been unlawful. Under the House bill, telecommunication companies can prove their innocence in court without the protection of the States immunity privilege. If these companies cannot prove that their actions were proper then they will be held accountable.

The Senate bill grants full immunity to any telecommunication company where the Attorney General certified that assistance was requested as part of the President's warrantless surveillance program. This blanket immunity goes to far, and do not support full immunity.

I believe the FISA Reform Act is better because it provides the telecommunications companies with due process and an opportunity to prove their guilt or innocence. I cannot support a case for blanket immunity and the FISA Reform Act does not allow it.

Lastly, the FISA Reform Act provides a forward looking provision that establishes a bipartisan National Commission, appointed by Congress. The Commission will investigate and report to Congress and the public about the Administration's warrantless surveillance activities.

Homeland security is not a Democratic or a Republican issue, it is not a House or Senate issue; it is an issue for all Americans—all of us need to be secure in our homes, secure in our thoughts, and secure in our communications.

I find it disturbing that our Republican colleagues will not join us to ensure that Americans are safe here and abroad. Disturbing that they do not recognize that we must protect the civil liberties of this Nation just as we protect American lives.

Mr. Speaker, in August of last year, I strongly opposed S. 1927, the so-called ''Protect America Act'' (PAA), when it came to a vote on the House floor. Had the Bush administration and the Republican-dominated 109th Congress acted more responsibly in the two preceding years, we would not have been in the position of debating legislation that had such a profoundly negative impact on the national security and on American values and civil liberties in the crush of exigent circumstances. As that regrettable episode clearly showed, it is true as the saying goes that haste makes waste.

The PAA was stampeded through the Congress in the midnight hour of the last day before the long August recess on the dubious claim that it was necessary to fill a gap in the Nation's intelligence gathering capabilities identified by Director of National Intelligence Mike McConnell. In reality, it would have circumvented the Fourth Amendment to the Constitution and represented an unwarranted transfer of power from the courts to the Executive Branch and a Justice Department led at that time by an Attorney General whose reputation for candor and integrity was, to put it charitably, subject to considerable doubt.

Under the House bill, the Foreign Intelligence Surveillance Court (FISC) is indispensable and is accorded a meaningful role in ensuring compliance with the law. The bill ensures that the FISC is empowered to act as an Article III court should act, which means the court shall operate neither as a rubberstamp nor a bottleneck. Rather, the function of the court is to validate the lawful exercise of executive power on the one hand, and to act as the guardian of individual rights and liberties on the other.

Moreover, Mr. Speaker, it is important to point out that the loudest demands for blanket immunity did not come from the telecommunications companies but from the administration, which raises the interesting question of whether the administration's real motivation is to shield from public disclosure the ways and means by which government officials may have ''persuaded'' telecommunications companies to assist in its warrantless surveillance programs.

My amendment, which was added during the markup last year, made a constructive contribution to the RESTORE Act by laying down a clear, objective criterion for the administration to follow and the FISA court to enforce in preventing reverse targeting.

''Reverse targeting'' is a concept well known to members of the Judiciary Committee but not so well understood by those less steeped in the minutiae of electronic surveillance; it is the practice where the Government targets foreigners without a warrant while its actual purpose is to collect information on certain U.S. persons.

One of the major concerns that libertarians, as well as progressives and civil liberties organizations, have with the FISA is that the temptation of national security agencies to engage in reverse targeting is often difficult to resist in the absence of strong safeguards to prevent it.

My amendment, accepted in the House Judiciary mark up, reduced any temptation to resort to reverse targeting by requiring the administration to obtain a regular, individualized FISA warrant whenever the ''real'' target of the surveillance is a person in the United States.

The amendment achieved this objective by requiring the administration to obtain a regular FISA warrant whenever a ''significant purpose of an acquisition is to acquire the communications of a specific person reasonably believed to be located in the United States.''

The language used in my amendment, ''significant purpose,'' is a term of art that has long been a staple of FISA jurisprudence and thus is well known and readily applied by the agencies, legal practitioners, and the FISA Court. Thus, the Jackson-Lee Amendment provided a clearer, more objective, criterion for the administration to follow and the FISA court to enforce to prevent the practice of reverse targeting without a warrant, which all of us can agree should not be permitted.

Mr. Speaker, nothing in the Act or the amendments to the Act should require the Government to obtain a FISA order for every overseas target on the off chance that they might pick up a call into or from the United States. Rather, what should be required, is a FISA order only where there is a particular, known person in the United States at the other end of the foreign target's calls in whom the Government has a significant interest such that a significant purpose of the surveillance has become to acquire that person's communications.

The acquisition of communications will happen over time and the Government will have the time to get an order while continuing its surveillance. It is the national security interest to require the Government to obtain an order at that point, so that it can lawfully acquire all of the target person's communications rather than continuing to listen to only some of them.

We are living in a time of economic crisis and acts of unfettered terrorism. Former President Franklin Delano Roosevelt said that ''our national determination to keep free of foreign wars and foreign entanglements cannot prevent us from feeling deep concern when ideals and principles that we have cherished are challenged.''

Like former President Roosevelt, we must secure our Nation from foreign entanglements but at the same time we must continue to champion the fundamental freedoms of all Americans regardless of whether the surveillance occurs in the United States or abroad.

It is very important to me; and it should be very important to Members of this body that we require what should be required in all cases—a warrant any time there is surveillance of a United States citizen.

In short, the Senate amendment to the House amendment makes a good bill even better. For this reason alone, civil libertarians should enthusiastically embrace the amended H.R. 3773.

The Bush administration would like the American people to believe that Democrats do not want to protect America. My Republican colleagues echo this false claim in both the chambers of Congress by questioning our patriotism. But I remind them that tyrannical behavior often questions the motivations of those seeking to protect civil liberties.

Let us not fall prey to false proclamations of an administration that takes our Bill of Rights and lays it to the side when they feel like it. Security must go hand-in-hand with liberty. Oppression of some for the alleged security of others is not the example this great Nation should set.

As I wrote in the Politico, ''the best way to win the war on terror is to remain true to our democratic traditions. If it retains its democratic character, no nation and no loose confederation of international villains will defeat the United States in the pursuit of its vital interests.''

Thus, the way forward to victory in the war on terror is for the United States to redouble its commitment to the Bill of Rights and the democratic values which every American will risk his or her life to defend. It is only by preserving our attachment to these cherished values that America will remain forever the home of the free, the land of the brave, and the country we love.

Mr. Speaker, FISA has served the Nation well for nearly 30 years, placing electronic surveillance inside the United States for foreign intelligence and counter-intelligence purposes on a sound legal footing, and I am far from persuaded that it needs to be jettisoned.

I continue to insist upon individual warrants, based on probable cause, when surveillance is directed at people in the United States. The Attorney General must still be required to submit procedures for international surveillance to the Foreign Intelligence Surveillance Court for approval, but the FISA Court should not be allowed to issue a basket warrant without making individual determinations about foreign surveillance.

In all candor, Mr. Speaker, I must restate my firm conviction that when it comes to the track record of this President's warrantless surveillance programs, there is still not enough on the public record about the nature and effectiveness of those programs, or the trustworthiness of this administration, to indicate that they require a blank check from Congress.

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

The inquiry must not be limited to the legal questions. It must include the operational details of each program of intelligence surveillance within the United States, including:

(1) Who the NSA is targeting;

(2) How it identifies its targets;

(3) The information the program collects and disseminates; and most important;

(4) Whether the program advances national security interests without unduly compromising the privacy rights of the American people.

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

Mr. Speaker, I encourage my colleagues to Join me In a vote of support for H. Res. 1041, the Rule providing for FISA Amendments Act. I yield back the balance of my time.

Mr. HASTINGS of Washington. Mr. Speaker, I am pleased to yield 3 minutes to the distinguished Republican Conference chairman, Mr. PUTNAM from Florida.

Mr. PUTNAM. I thank my friend for the time.

Mr. Speaker, much of what we debate down here often is theoretical. We say if this passes, we believe this will happen. If this fails, we believe that will happen. Much of it is speculative. It is our opinions coming down here and directing, gazing into the future about what we think will happen.

Much in this toxic atmosphere that is Washington that we debate is very partisan. This issue is neither theoretical nor partisan. It is not theoretical anymore, because this is now the 27th day that we have denied our intelligence agencies and law enforcement officials the tools they need to keep America safe.

It is not partisan because the bill that we are asking you to vote for and support here in a few minutes already passed the Senate with 68 Senators voting for it. It was voted out on a bipartisan basis.

Now, anyone who follows the activities of the Senate knows that they have a hard time getting 68 votes for a Mother's Day resolution. For them to find 68 votes on an issue of this magnitude is remarkable.

The only way that we can put back into place the provisions of the Protect America Act that allow us to prevent future plots and conspiracies and attacks on our homeland is to pass the Senate bill. If we do not pass the Senate bill today, Congress will leave for 2 more weeks, 2 more weeks that we will deny the eyes and ears to our law enforcement and intelligence officials who keep us safe.

Now, let me just draw attention to the fact that 21 Blue Dog Democrats have put their names to a letter saying pass the Senate bill; 68 Senators have voted to pass the Senate bill. The bipartisan Senate Intelligence Committee said, and I quote, ''Electronic communication service providers acted in good faith on a good faith belief that the President's program and their assistance was lawful.''

This is not a theoretical debate. This is an important tool that we must restore to the hands of our intelligence agencies before Congress goes home for 2 more weeks. This is an example of the tyranny of the few blocking the will of the many. It is not just Republicans who say we need to pass this. It is Senator ROCKEFELLER, chairman of the Senate Intelligence Committee. It is 21 Blue Dog Democrats.

It is 25 States' attorneys general. This is too important to let it slip through our fingers before we go home for 2 weeks. Pass the previous question. Deem the Senate bill passed and give those who stand on alert as the guardians of our freedom and liberty, liberty and security on a daily basis, what they need to continue to keep us safe.

Don't extend the 27 days of darkness for another 2 weeks. Give them the tools they need. Pass the previous question. Pass the Senate bill.

Mr. ARCURI. Mr. Speaker, I yield 4½ minutes to the gentleman from New York, a member of the Judiciary Committee, Mr. NADLER.

Mr. NADLER. Mr. Speaker, the last few weeks, the last few minutes we have heard assertions from our colleagues on the other side of the aisle that are false and designed to mislead and frighten the American people. They claim that we allowed the Protect America Act to expire, that we are dark for 27 days.

Ken Wainstein, the Assistant Attorney General of the United States, and the Bush administration admitted that because of the provisions of the group warrants in the Protect America Act that had gone on for a year, didn't change anything. It is still in effect, number one.

Number two, we forget, this House passed a FISA updating modernization bill in November, on November 14. We called it the RESTORE Act. We waited for the Senate to pass a bill so we could go to conference and compromise on it. When did they pass a bill? Not in November, not in December, not in January. Because of Republican foot-dragging, they didn't pass the bill until February, mid-February, three months after we passed the bill here, and two days before we went home for a week for the Presidents Day recess.

The President came out and said it's up to the House to pass the Senate bill, no questions asked. But there are a lot of questions about the Senate bill. Maybe our bill isn't perfect, but their bill is far from perfect, and our bill is closer to perfect than theirs.

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So then we said, well, if you don't want, because catastrophe will happen, according to the President and the Republicans if we go home without passing the Senate bill, we will extend the Protect America Act for 3 weeks until we can come back and deal with this. Who voted it down? The Republicans. They said, no, don't extend it. The President said he would veto an extension.

So let's not hear any remarks on this floor from that side about how we are dark because the act expired. It expired because they made it expire. They voted against a 21-day extension that we could have renewed if necessary until we got this all figured out. So let's not hear any less-than-honest assertions about we are dark and we are unprotected and it is the Democrats' fault.

Mr. Speaker, we have a very good bill here. It gives the intelligence community every single tool they need and

every tool they say they need. How does it differ from the Senate bill? In two ways. One, it provides for some closer judicial supervision, because while we are giving the intelligence community the tools they need to wiretap on American citizens, on people who are not American citizens, we have to make sure that our constitutional rights and liberties are protected so that this country, which we have all defended, and we all want to defend, remains worthy of being defended by defending our own liberties.

Remember why we enacted protections in the first place, because the administration at the time wiretapped Martin Luther King. We don't want that to happen again by a future administration. And so we must protect our civil liberties.

We are told that telecom companies, if we don't provide retroactive immunity, they won't cooperate in the future, we won't get their help. Number one, that is an aspersion on their patriotism. Number two, they can be compelled to do so under court order. And number three, they have always had immunity. They have it now. All they have to do to have immunity is to have a request from the administration that says: A, we need your help; B, you are not violating the law if you do what we ask; and C, you don't need a court order. If they get that request, whether those assertions are true or not, as long as the administration says we need your help, what we are asking you to do won't violate the law, and you don't need a court order, they are absolutely immune. And they have always had this immunity.

So why do they need retroactive immunity, they say because the administration won't permit them to go to court and say we were asked for help, we gave that help. We have this request and we got the legal assurances because the administration won't let that go to court because it says it will violate State secrets.

So what does our bill do? It says you can go to court under secret procedures to protect the security of the State secrets, but you can assert your defense in court and get the case thrown out if you at least got the assurance by the administration in advance, which is all the law required. If you didn't get that, then you have no respect for the privacy rights of Americans and you don't deserve immunity. Even if we gave retroactive immunity for the future to the telecom company that helped us next week, they still have the same requirements for immunity. And if they wanted to go to court to assert them if someone sued them, they would still have to go to court and say the same thing. So you are dealing with a one-time fix.

Retroactive immunity takes it out of the courts and says Congress shall say to American citizens you're wrong, you can't protect your constitutional rights in court, you're right. That is a duty for the courts, not for Congress. That is the basis of the protections of all of our rights. The Senate bill goes the wrong way. We protect the telecom companies and protect our liberties. It is the right way to go. I urge adoption of this rule.

Mr. HASTINGS of Washington. Mr. Speaker, I am pleased to yield 1 minute to the gentleman from Ohio (Mr. BOEHNER), the distinguished Republican leader.

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

My colleagues, several years ago when the current Speaker, Speaker PELOSI, had my job as the minority leader, she said that bills should generally come to the floor under a fair and open process with amendments allowed and substitutes allowed.

And yet here we are today once again violating the very words that she said how the minority should be treated by bringing a bill to the floor, a Senate bill with amendments crafted by the House with no opportunity for amendments, no opportunity for substitutes. And no opportunity to vote straight up or down on the bipartisan bill that came over from the Senate.

I think that what we have seen here is just a pattern of we are for this, we create rules that allow the minority the opportunity to be fairly heard, and yet they are routinely violated.

And so the only way we can have a straight up-or-down vote on the Senate bill that passed the Senate 68–29, the only way we can have a vote on that is to defeat the previous question. Why do we want to deny the Members of the House to vote on the bipartisan Senate bill? I can probably tell you, that's because it would pass. A majority of the Members of the House of Representatives are in favor of the Senate bill. But House leaders are standing in the way of the opportunity for House Members to actually vote on that bill.

We can get into the merits of the changes that were made to the Senate bill that are being debated here. I think they handcuff our intelligence officials. I think that they open up a wide avenue for trial lawyers to hold communication companies at bay and threaten their very willingness to help us in this very serious business of tracking down those who would want to do Americans harm.

And so I would ask my colleagues to defeat the previous question. Let's have a chance to vote on the bipartisan Senate bill and let's allow the House to work its will.

Mr. ARCURI. Mr. Speaker, I yield 3 minutes to the gentleman from Texas, the distinguished chairman of the Intelligence Committee, Mr. REYES.

Mr. REYES. Mr. Speaker, I thank the gentleman for yielding.

I'm not a lawyer, but I am told by lawyers that every lawyer learns to argue the following way: When the law is against you, they are taught to argue the facts. When the facts are against you, they are taught to argue the law. To a certain extent, that is what is going on here today.

We just heard from the distinguished minority leader that he wants the House to go in neutral, put our engine in neutral and just vote on what the Senate has sent over. In other words, we want to rush to rubber-stamp what the administration wants. That's not going to happen.

We also heard this morning that somehow my good friend from Washington State says they haven't had enough time to debate these issues, the FISA issue. I would remind my good friend that we had invited our colleagues on the Republican side to work with us, to go through a process, the process of setting up our ability to go to conference, and they refused. They refused to participate. So it is not a failure of getting enough time to participate in the debate; it is a failure of wanting to participate because the rationale is let's rubber-stamp what the administration wants, which is the Senate version.

We also heard that somehow we are losing information. Somehow we are at a disadvantage because the Protect America Act expired. Nothing could be further from the truth. I would remind all of the Members that were here last night that I held up two documents, and one of those documents authored by the DNI and the Attorney General gave you the information that refutes that argument.

We have done everything that the DNI has asked us to do in this bill. He wants us to give the intelligence community the ability to monitor foreign to foreign. This bill does that.

He wants us to give the telecom companies the opportunity to state their case in order to get immunity. This bill does that.

The third thing he wanted was to make sure that any time that there is an American involved or an American address or phone involved, that a warrant be secured. This bill requires that.

This bill puts the FISA Court back in the process. That's the American way.

I will close by saying that I come from a State that reveres the second amendment, our right to bear arms. But I would submit to all of you, my colleagues here, that that amendment would be irrelevant if we were to give the administration exactly what they want, and that is the ability to monitor anyone, any time, for any reason, because a weapon or a gun is not going to do you any good if the government knows your every move.

The Senate version is their answer to give the administration exactly what they want. We took a different approach. Instead of being in neutral, we are telling the administration and, with all due respect, we are telling the Senate, let's reconcile our differences. We have given the DNI every single thing that he wants. And simply stated today, that dog is not hunting that would create an atmosphere of fear for America.

Mr. HASTINGS of Washington. Mr. Speaker, I yield myself 15 seconds before I yield to the gentleman from Pennsylvania.

The gentleman from Texas just said that he wanted to reconcile the differences between the House position and the Senate; yet there has never been a motion or an attempt by the House to go to conference on these two bills. If you truly want to have a compromise, why don't you go to conference? That hasn't happened.

Mr. Speaker, I yield 2 minutes to the gentleman from Pennsylvania (Mr. DENT).

Mr. DENT. Mr. Speaker, I rise to urge that we defeat the previous question so we can adopt the Protect America Act.

People in this country think that Washington, D.C., is broken, and they are absolutely right. It is. And this issue is proof positive of why Washington, D.C., is broken. Yes, we do have an agreement. It is a bipartisan agreement, 68 votes in the Senate. There is a majority here, but the majority leadership won't allow us to consider this very important and necessary legislation.

Senator ROCKEFELLER, the Democratic chairman of the Intelligence Committee in the Senate, has said our intelligence capacities are being degraded because we have failed to pass the Protect America Act.

You know, it is time that we put the national interest ahead of the special interests. Why are we protecting the most litigious among us in our society at the expense of our troops serving overseas? We know the issues. It is retroactive immunity. The telecommunications companies were attempting to help us in good faith, and no good deed goes unpunished. That is what it happening here. It is time to get the job done.

I'm going to refer to an article I read in the Wall Street Journal back in January, 2006, by Debra Burlingame, the sister of the pilot who crashed into the Pentagon. The title is, ''Al Qaeda, not the FBI, is the greater threat to America.'' I think we should heed her advice and recall, because of that wall that existed before 9/11 between the intelligence agency and our domestic law enforcement, it prevented us from being more effective.

Today, we are placing barriers between our government and those who want to help us in the telecommunications sector, but they are going to be forced to comply with this. They will not be able to do so voluntarily. We know what the issue is. The Fraternal Order of Police, many State attorneys general, the VFW, all agree we should pass the bipartisan. We have it within our means to do it. I don't understand why not. It is important for the majority leadership to explain to this House why they won't let this bipartisan agreement be adopted.

The American people are watching. They want us to get the job done. They have had enough.

Mr. Speaker, I include the Burlingame article for the RECORD.

[From the Wall Street Journal, Jan. 30, 2006]

OUR RIGHT TO SECURITY

AL QAEDA, NOT THE FBI, IS THE GREATER THREAT TO AMERICA

(By Debra Burlingame)

One of the most excruciating images of the September 11 attacks is the sight of a man who was trapped in one of the World Trade Center towers. Stripped of his suit jacket and tie and hanging on to what appears to be his office curtains, he is seen trying to lower himself outside a window to the floor immediately below. Frantically kicking his legs in an effort to find a purchase, he loses his grip, and falls.

That horrific scene and thousands more were the images that awakened a sleeping nation on that long, brutal morning. Instead of overwhelming fear or paralyzing self-doubt, the attacks were met with defiance, unity and a sense of moral purpose. Following the heroic example of ordinary citizens who put their fellow human beings and the public good ahead of themselves, the country's leaders cast aside politics and personal ambition and enacted the USA Patriot Act just 45 days later.

A mere four-and-a-half years after victims were forced to choose between being burned alive and jumping from 90 stories, it is frankly shocking that there is anyone in Washington who would politicize the Patriot Act. It is an insult to those who died to tell the American people that the organization posing the greatest threat to their liberty is not al Qaeda but the FBI. Hearing any member of Congress actually crow about ''killing'' or ''playing chicken'' with this critical legislation is as disturbing today as it would have been when Ground Zero was still smoldering. Today we know in far greater detail what not having it cost us.

Critics contend that the Patriot Act was rushed into law in a moment of panic. The truth is, the policies and guidelines it corrected had a long, troubled history and everybody who had to deal with them knew it. The ''wall'' was a tortuous set of rules promulgated by Justice Department lawyers in 1995 and imagined into law by the Foreign Intelligence Surveillance Act (FISA) court.

Conceived as an added protection for civil liberties provisions already built into the statute, it was the wall and its real-world ramifications that hardened the failure-to-share culture between agencies, allowing early information about 9/11 hijackers Khalid al-Mihdhar and Nawaf al-Hazmi to fall through the cracks. More perversely, even after the significance of these terrorists and their presence in the country was known by the FBI's intelligence division, the wall prevented it from talking to its own criminal division in order to hunt them down.

Furthermore, it was the impenetrable FISA guidelines and fear of provoking the FISA court's wrath if they were transgressed that discouraged risk-averse FBI supervisors from applying for a FISA search warrant in the Zacarias Moussaoui case. The search, finally conducted on the afternoon of 9/11, produced names and phone numbers of people in the thick of the 9/11 plot, so many fertile clues that investigators believe that at least one airplane, if not all four, could have been saved.

In 2002, FISA's appellate level Court of Review examined the entire statutory scheme for issuing warrants in national security investigations and declared the ''wall'' a nonsensical piece of legal overkill, based neither on express statutory language nor reasonable interpretation of the FISA statute. The lower court's attempt to micromanage the execution of national security warrants was deemed an assertion of authority which neither Congress or the Constitution granted it. In other words, those lawyers and judges who created, implemented and so assiduously enforced the FISA guidelines were wrong and the American people paid dearly for it.

Despite this history, some members of Congress contend that this process-heavy court is agile enough to rule on quickly needed National Security Agency (NSA) electronic surveillance warrants. This is a dubious claim. Getting a FISA warrant requires a multistep review involving several lawyers at different offices within the Department of Justice. It can take days, weeks, even months if there is a legal dispute between the principals. ''Emergency'' 72-hour intercepts require sign-offs by NSA lawyers and pre-approval by the attorney general before surveillance can be initiated. Clearly, this is not conducive to what Gen. Michael Hayden, principal deputy director of national intelligence, calls ''hot pursuit'' of al Qaeda conversations.

The Senate will soon convene hearings on renewal of the Patriot Act and the NSA terrorist surveillance program. A minority of senators want to gamble with American lives and ''fix'' national security laws, which they can't show are broken. They seek to eliminate or weaken anti-terrorism measures which take into account that the Cold War and its slow-moving, analog world of landlines and stationary targets is gone. The threat we face today is a completely new paradigm of global terrorist networks operating in a high-velocity digital age using the Web and fiber-optic technology. After four-and-a-half years without another terrorist attack, these senators think we're safe enough to cave in to the same civil liberties lobby that supported that deadly FISA wall in the first place. What if they, like those lawyers and judges, are simply wrong?

Meanwhile, the media, mouthing phrases like ''Article II authority,'' ''separation of powers'' and ''right to privacy,'' are presenting the issues as if politics have nothing to do with what is driving the subject matter and its coverage. They want us to forget four years of relentless ''connect-the-dots'' reporting about the missed chances that ''could have prevented 9/11.'' They have discounted the relevance of references to the two 9/11 hijackers who lived in San Diego. But not too long ago, the media itself reported that phone records revealed that five or six of the hijackers made extensive calls overseas.

NBC News aired an ''exclusive'' story in 2004 that dramatically recounted how al-Hazmi and al-Mihdhar, the San Diego terrorists who would later hijack American Airlines flight 77 and fly it into the Pentagon, received more than a dozen calls from an al Qaeda ''switchboard'' inside Yemen where al-Mihdhar's brother-in-law lived. The house received calls from Osama Bin Laden and relayed them to operatives around the world. Senior correspondent Lisa Myers told the shocking story of how, ''The NSA had the actual phone number in the United States that the switchboard was calling, but didn't deploy that equipment, fearing it would be accused of domestic spying.'' Back then, the NBC script didn't describe it as ''spying on Americans.'' Instead, it was called one of the ''missed opportunities that could have saved 3,000 lives.''

Another example of opportunistic coverage concerns the Patriot Act's ''library provision.'' News reports have given plenty of ink and airtime to the ACLU's unsupported claims that the government has abused this important records provision. But how many Americans know that several of the hijackers repeatedly accessed computers at public

libraries in New Jersey and Florida, using personal Internet accounts to carry out the conspiracy? Al-Mihdhar and al-Hazmi logged on four times at a college library in New Jersey where they purchased airline tickets for AA 77 and later confirmed their reservations on Aug. 30. In light of this, it is ridiculous to suggest that the Justice Department has the time, resources or interest in ''investigating the reading habits of law abiding citizens.''

We now have the ability to put remote control cameras on the surface of Mars. Why should we allow enemies to annihilate us simply because we lack the clarity or resolve to strike a reasonable balance between a healthy skepticism of government power and the need to take proactive measures to protect ourselves from such threats? The mantra of civil-liberties hard-liners is to ''question authority''—even when it is coming to our rescue—then blame that same authority when, hamstrung by civil liberties laws, it fails to save us. The old laws that would prevent FBI agents from stopping the next al-Mihdhar and al-Hazmi were built on the bedrock of a 35-year history of dark, defeating mistrust. More Americans should not die because the peace-at-any-cost fringe and antigovernment paranoids still fighting the ghost of Nixon hate George Bush more than they fear al Qaeda. Ask the American people what they want. They will say that they want the commander in chief to use all reasonable means to catch the people who are trying to rain terror on our cities. Those who cite the soaring principle of individual liberty do not appear to appreciate that our enemies are not seeking to destroy individuals, but whole populations.

Three weeks before 9/11, an FBI agent with the bin Laden case squad in New York learned that al-Mihdhar and al-Hazmi were in this country. He pleaded with the national security gatekeepers in Washington to launch a nationwide manhunt and was summarily told to stand down. When the FISA Court of Review tore down the wall in 2002, it included in its ruling the agent's Aug. 29, 2001, email to FBI headquarters: ''Whatever has happened to this—someday someone will die—and wall or not—the public will not understand why we were not more effective and throwing every resource we had at certain problems. Let's hope the National Security Law Unit will stand behind their decisions then, especially since the biggest threat to us now, [bin Laden], is getting the most 'protection.' ''

The public has listened to years of stinging revelations detailing how the government tied its own—hands in stopping the devastating attacks of September 11. It is an irresponsible violation of the public trust for members of Congress to weaken the Patriot Act or jeopardize the NSA terrorist surveillance program because of the same illusory theories that cost us so dearly before, or worse, for rank partisan advantage. If they do, and our country sustains yet another catastrophic attack that these antiterrorism tools could have prevented, the phrase ''connect the dots'' will resonate again—but this time it will refer to the trail of innocent American blood which leads directly to the Senate floor.

Mr. ARCURI. Mr. Speaker, I would again just like to point out that what this bill does is unshackle the telecommunications companies because what we do want to do in this particular case is ensure that they are able to defend themselves if they have cooperated with the government and followed the law, and that is exactly what this bill does.

Mr. Speaker, I yield 1½ minutes to the gentlewoman from Kansas (Mrs. BOYDA).

Mrs. BOYDA of Kansas. Mr. Speaker, I just had to come down to the floor and speak on this. No one, there isn't anybody who disagrees that we ought to be wiretapping the terrorists. No one disagrees with that. Democrats, Republicans, everyone wants to keep this country safe.

□ 1115

Let's make something real clear about what's at stake here. What's at stake is whether we wiretap Americans. That's what we're talking about.

The bill that we proposed that we have here, it can be summarized in one thing: wiretap first, get permission later. Go out and be aggressive. As a matter of fact, you can spy on Americans. You can do anything. You can spy, you can go out there and keep our country safe.

But when it comes to spying on Americans, that's the difference here. We believe that you need a warrant to do that, even after the fact of 6 or 7 days later to go back and tell the court what you've done.

I, for one, do not, and am not able to stand here and say, as the other side says, that the terrorists have already won; we need to give up our basic constitutional right. I don't believe that the terrorists have won, and I find it extremely discouraging.

What I find so troubling is the same, same rhetoric that we heard for this march to Iraq and, quite honestly, lately this march to Iran. Its the same rhetoric that we're hearing now. It's ''trust me.''

Well, I'll tell you what. I didn't get sent to Washington, DC not to speak up. A lot of people are worried sick that a 30-second ad is going to kick them out of office. And I'll tell you what, I will not put my own re-election ahead of the absolute determination that I have to make sure, first and foremost, that my family and your family are safe, but that we do not shred that Constitution to do it. This is not an either/or, and we need to find a balance. I do not believe the terrorists have won.

Mr. HASTINGS of Washington. Mr. Speaker, I reserve my time.

Mr. ARCURI. Mr. Speaker, I yield 1½ minutes to the gentlewoman from California (Ms. ZOE LOFGREN), a member of the Judiciary Committee.

Ms. ZOE LOFGREN of California. Mr. Speaker, I rise to urge support of the rule so we can adopt H.R. 3773.

There's been a lot of very misleading and confusing rhetoric about the issue of immunity. The truth is the phone companies have immunity already under current law. It's 18 U.S. Code, section 2511. And let me just read part of it: ''Notwithstanding any other law, providers of communications services are authorized to provide information in two cases: if there's a court order, or if they receive a certification in writing by a person specified in the title or the Attorney General of the United States that says either no warrant or court order is required, all the statutory requirements have been met and the assistance is required.''

The statute says no cause of action shall lie in any court against any provider of wire or electronic communications if they have received this certification.

I submit the entire text of section 2511 for the RECORD.

[From Westlaw, 18 U.S.C.A. § 2511, Effective: Nov. 25, 2002]

United States Code Annotated Currentness
Title 18. Crimes and Criminal Procedure (Refs & Annos)
Part I. Crimes (Refs & Annos)
Chapter 119. Wire and Electronic Communications Interception and Interception of Oral Communications (Refs & Annos)
§ 2511. Interception and disclosure of wire, oral, or electronic communications prohibited

(1) Except as otherwise specifically provided in this chapter any person who—

(a) intentionally intercepts, endeavors to intercept, or procures any other person to intercept or endeavor to intercept, any wire, oral, or electronic communication;

(b) intentionally uses, endeavors to use, or procures any other person to use or endeavor to use any electronic, mechanical, or other device to intercept any oral communication when—

(i) such device is affixed to, or otherwise transmits a signal through, a wire, cable, or other like connection used in wire communication; or

(ii) such device transmits communications by radio, or interferes with the transmission of such communication; or

(iii) such person knows, or has reason to know, that such device or any component thereof has been sent through the mail or transported in interstate or foreign commerce; or

(iv) such use or endeavor to use (A) takes place on the premises of any business or other commercial establishment the operations of which affect interstate or foreign commerce; or (B) obtains or is for the purpose of obtaining information relating to the operations of any business or other commercial establishment the operations of which affect interstate or foreign commerce; or

(v) such person acts in the District of Columbia, the Commonwealth of Puerto Rico, or any territory or possession of the United States;

(c) intentionally discloses, or endeavors to disclose, to any other person the contents of any wire, oral, or electronic communication, knowing or having reason to know that the information was obtained through the interception of a wire, oral, or electronic communication in violation of this subsection;

(d) intentionally uses, or endeavors to use, the contents of any wire, oral, or electronic communication, knowing or having reason to know that the information was obtained through the interception of a wire, oral, or electronic communication in violation of this subsection; or

(e) (i) intentionally discloses, or endeavors to disclose, to any other person the contents of any wire, oral, or electronic communication, intercepted by means authorized by sections 2511(2)(a)(ii), 2511(2)(b)–(c), 2511(2)(e), 2516, and 2518 of this chapter, (ii) knowing or having reason to know that the information was obtained through the interception of such a communication in connection with a criminal investigation, (iii) having obtained

or received the information in connection with a criminal investigation, and (iv) with intent to or improperly obstruct, impede, or interfere with a duly authorized criminal investigation,

shall be punished as provided in subsection (4) or shall be subject to suit as provided in subsection (5).

(2)(a)(i) It shall not be unlawful under this chapter for an operator of a switchboard, or an officer, employee, or agent of a provider of wire or electronic communication service, whose facilities are used in the transmission of a wire or electronic communication, to intercept, disclose, or use that communication in the normal course of his employment while engaged in any activity which is a necessary incident to the rendition of his service or to the protection of the rights or property of the provider of that service, except that a provider of wire communication service to the public shall not utilize service observing or random monitoring except for mechanical or service quality control checks.

(ii) Notwithstanding any other law, providers of wire or electronic communication service, their officers, employees, and agents, landlords, custodians, or other persons, are authorized to provide information, facilities, or technical assistance to persons authorized by law to intercept wire, oral, or electronic communications or to conduct electronic surveillance, as defined in section 101 of the Foreign Intelligence Surveillance Act of 1978, if such provider, its officers, employees, or agents, landlord, custodian, or other specified person, has been provided with—

(A) a court order directing such assistance signed by the authorizing judge, or

(B) a certification in writing by a person specified in section 2518(7) of this title or the Attorney General of the United States that no warrant or court order is required by law, that all statutory requirements have been met, and that the specified assistance is required.

setting forth the period of time during which the provision of the information, facilities, or technical assistance is authorized and specifying the information, facilities, or technical assistance required. No provider of wire or electronic communication service, officer, employee, or agent thereof, or landlord, custodian, or other specified person shall disclose the existence of any interception or surveillance or the device used to accomplish the interception or surveillance with respect to which the person has been furnished a court order or certification under this chapter, except as may otherwise be required by legal process and then only after prior notification to the Attorney General or to the principal prosecuting attorney of a State or any political subdivision of a State, as may be appropriate. Any such disclosure, shall render such person liable for the civil damages provided for in section 2520. No cause of action shall lie in any court against any provider of wire or electronic communication service, its officer, employees, or agents, landlord, custodian, or other specified person for providing information, facilities, or assistance in accordance with the terms of a court order, statutory authorization, or certification under this chapter.

(b) It shall not be unlawful under this chapter for an officer, employee, or agent of the Federal Communications Commission, in the normal course of his employment and in discharge of the monitoring responsibilities exercised by the Commission in the enforcement of chapter 5 of title 47 of the United States Code, to intercept a wire or electronic communication, or oral communication transmitted by radio, or to disclose or use the information thereby obtained.

(c) It shall not be unlawful under this chapter for a person acting under color of law to intercept a wire, oral, or electronic communication, where such person is a party to the communication or one of the parties to the communication has given prior consent to such interception.

(d) It shall not be unlawful under this chapter for a person not acting under color of law to intercept a wire, oral, or electronic communication where such person is a party to the communication or where one of the parties to the communication has given prior consent to such interception unless such communication is intercepted for the purpose of committing any criminal or tortious act in violation of the Constitution or laws of the United States or of any State.

(e) Notwithstanding any other provision of this title or section 705 or 706 of the Communications Act of 1934, it shall not be unlawful for an officer, employee, or agent of the United States in the normal course of his official duty to conduct electronic surveillance, as defined in section 101 of the Foreign Intelligence Surveillance Act of 1978, as authorized by that Act.

(f) Nothing contained in this chapter or chapter 121 or 206 of this title, or section 705 of the Communications Act of 1934, shall be deemed to affect the acquisition by the United States Government of foreign intelligence information from international or foreign communications, or foreign intelligence activities conducted in accordance with otherwise applicable Federal law involving a foreign electronic communications system, utilizing a means other than electronic surveillance as defined in section 101 of the Foreign Intelligence Surveillance Act of 1978, and procedures in this chapter or chapter 121 and the Foreign Intelligence Surveillance Act of 1978 shall be the exclusive means by which electronic surveillance, as defined in section 101 of such Act, and the interception of domestic wire, oral, and electronic communications may be conducted.

(g) It shall not be unlawful under this chapter or chapter 121 of this title for any person—

(i) to intercept or access an electronic communication made through an electronic communication system that is configured so that such electronic communication is readily accessible to the general public;

(ii) to intercept any radio communication which is transmitted—

(I) by any station for the use of the general public, or that relates to ships, aircraft, vehicles, or persons in distress;

(II) by any governmental, law enforcement, civil defense, private land mobile, or public safety communications system, including police and fire, readily accessible to the general public;

(III) by a station operating on an authorized frequency within the bands allocated to the amateur, citizens band, or general mobile radio services; or

(IV) by any marine or aeronautical communications system;

(iii) to engage in any conduct which—

(I) is prohibited by section 633 of the Communications Act of 1934; or

(II) is excepted from the application of section 705(a) of the Communications Act of 1934 by section 705(b) of that Act;

(iv) to intercept any wire or electronic communication the transmission of which is causing harmful interference to any lawfully operating station or consumer electronic equipment, to the extent necessary to identify the source of such interference; or

(v) for other users of the same frequency to intercept any radio communication made through a system that utilizes frequencies monitored by individuals engaged in the provision or the use of such system, if such communication is not scrambled or encrypted.

(h) It shall not be unlawful under this chapter—

(i) to use a pen register or a trap and trace device (as those terms are defined for the purposes of chapter 206 (relating to pen registers and trap and trace devices) of this title); or

(ii) for a provider of electronic communication service to record the fact that a wire or electronic communication was initiated or completed in order to protect such provider, another provider furnishing service toward the completion of the wire or electronic communication, or a user of that service, from fraudulent, unlawful or abusive use of such service.

(i) It shall not be unlawful under this chapter for a person acting under color of law to intercept the wire or electronic communications of a computer trespasser transmitted to, through, or from the protected computer, if—

(I) the owner or operator of the protected computer authorizes the interception of the computer trespasser's communications on the protected computer;

(II) the person acting under color of law is lawfully engaged in an investigation;

(III) the person acting under color of law has reasonable grounds to believe that the contents of the computer trespasser's communications will be relevant to the investigation; and

(IV) such interception does not acquire communications other than those transmitted to or from the computer trespasser.

(3)(a) Except as provided in paragraph (b) of this subsection, a person or entity providing an electronic communication service to the public shall not intentionally divulge the contents of any communication (other than one to such person or entity, or an agent thereof) while in transmission on that service to any person or entity other than an addressee or intended recipient of such communication or an agent of such addressee or intended recipient.

(b) A person or entity providing electronic communication service to the public may divulge the contents of any such communication—

(i) as otherwise authorized in section 2511(2)(a) or 2517 of this title;

(ii) with the lawful consent of the originator or any addressee or intended recipient of such communication;

(iii) to a person employed or authorized, or whose facilities are used, to forward such communication to its destination; or

(iv) which were inadvertently obtained by the service provider and which appear to pertain to the commission of a crime, if such divulgence is made to a law enforcement agency.

(4)(a) Except as provided in paragraph (b) of this subsection or in subsection (5), whoever violates subsection (1) of this section shall be fined under this title or imprisoned not more than five years, or both.

(b) Conduct otherwise an offense under this subsection that consists of or relates to the interception of a satellite transmission that is not encrypted or scrambled and that is transmitted—

(i) to a broadcasting station for purposes of retransmission to the general public; or

(ii) as an audio subcarrier intended for redistribution to facilities open to the public, but not including data transmissions or telephone calls,

is not an offense under this subsection unless the conduct is for the purposes of direct or indirect commercial advantage or private financial gain.

[(c) Redesignated (b)]

(5)(a)(i) If the communication is—

(A) a private satellite video communication that is not scrambled or encrypted and

the conduct in violation of this chapter is the private viewing of that communication and is not for a tortious or illegal purpose or for purposes of direct or indirect commercial advantage or private commercial gain; or

(B) a radio communication that is transmitted on frequencies allocated under subpart D of part 74 of the rules of the Federal Communications Commission that is not scrambled or encrypted and the conduct in violation of this chapter is not for a tortious or illegal purpose or for purposes of direct or indirect commercial advantage or private commercial gain,

then the person who engages in such conduct shall be subject to suit by the Federal Government in a court of competent jurisdiction.

(ii) In an action under this subsection—

(A) if the violation of this chapter is a first offense for the person under paragraph (a) of subsection (4) and such person has not been found liable in a civil action under section 2520 of this title, the Federal Government shall be entitled to appropriate injunctive relief; and

(B) if the violation of this chapter is a second or subsequent offense under paragraph (a) of subsection (4) or such person has been found liable in any prior civil action under section 2520, the person shall be subject to a mandatory $500 civil fine.

(b) The court may use any means within its authority to enforce an injunction issued under paragraph (ii)(A), and shall impose a civil fine of not less than $500 for each violation of such an injunction.

CREDIT(S)

(Added Pub. L. 90–351, Title III, §802, June 19, 1968, 82 Stat. 213, and amended Pub. L. 91–358, Title II, §211(a), July 29, 1970, 84 Stat. 654; Pub. L. 95–511, Title II, §201(a) to (c), Oct. 25, 1978, 92 Stat. 1796, 1797; Pub. L. 98–549, §6(b)(2), Oct. 30, 1984, 98 Stat. 2804; Pub. L. 99–508, Title I, §101(b), (c)(1), (5), (6), (d), (t), 102, Oct. 21, 1986, 100 Stat. 1849 to 1853; Pub. L. 103–322, Title XXXII, §320901, Title XXXIII, §330016(1)(f)(G), Sept. 13, 1994, 108 Stat. 2123, 2147; Pub. L. 103–414, Title II, §202(b), 204, 205, Oct. 25, 1994, 108 Stat. 4290, 4291; Pub. L. 104–294, Title VI, §604(b)(42), Oct. 11, 1996, 110 Stat. 3509; Pub. L. 107–56, Title II, §§204, 217(2), Oct. 26, 2001, 115 Stat. 281, 291; Pub. L. 107–296, Title II, §225(h)(2), Nov. 25, 2002, 116 Stat. 2158.)

Current through P.L. 110–195 (excluding P.L. 110–181) approved 3–12–08

Simply put, the phone companies have immunity. The only issue is, do they get their day in court to tell a judge that they have immunity? This bill allows for that.

I think the phone companies, like any other party, have a right to assert their defenses and be heard by a judge and have their case be heard. This bill provides for that.

Now, why wouldn't the Bush administration be supportive?

I think the administration is more concerned about their liability than the phone companies.

Mr. HASTINGS of Washington. Mr. Speaker, I continue to reserve my time.

Mr. ARCURI. Mr. Speaker, I am prepared to close. We have no further speakers on our side.

Mr. HASTINGS of Washington. Mr. Speaker, how much time do I have?

The SPEAKER pro tempore. The gentleman from Washington has 8¼ minutes.

Mr. HASTINGS of Washington. Mr. Speaker, I yield myself the balance of the time.

Mr. Speaker, earlier in this debate I put into the RECORD the January 28 letter from the 21 Blue Dog Democrats to Speaker PELOSI in support of the bipartisan Senate bill. And I'd like to quote from that letter, Mr. Speaker:

''Following the Senate's passage of a FISA bill, it will be necessary for the House to quickly consider FISA legislation to get a bill to the President before the Protect America Act expires in February.''

Mr. Speaker, the Protect America Act has expired, as has the entire month of February. But House Democrat leaders have not acted, as these 21 Blue Dog Democrats have asked, on our national security needs.

I will quote again from the Blue Dog Democrat letter: ''We have it within our ability to replace the expiring Protect America Act by passing strong bipartisan FISA modernization legislation that can be signed into law, and we should do so. The consequences of not passing such a measure would place our national security at undue risk.''

I regret to say, Mr. Speaker, that for 27 days, our country's national security has been put at undue risk because FISA legislation has not been passed because the Democrat leaders are blocking the House from voting, from even voting on the Senate proposal that passed the Senate by a 68–29 vote.

So let me be very clear about what I'm talking about when I'm going to ask my colleagues to vote ''no'' on the previous question, and why that will be an attempt, or will be a means, by which we can address the Senate bill for the first time in this body, because this, what I'm going to do, is not an ordinary motion.

By voting ''no,'' Mr. Speaker, on the previous question, I will seek to amend one specific clause of the rule, H. Res. 1041, so that the House will still be permitted to debate the FISA bill that this underlying rule makes in order; but if that bill, and if that proposal does not pass this body, then the House, under the provision that I'm seeking to amend the rule, will agree to the Senate bill; and, therefore, the bill would be sent to the President to become law.

Mr. Speaker, I ask unanimous consent to have the text of the amendment and extraneous material inserted into the RECORD prior to the vote on the previous question.

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

There was no objection.

Mr. HASTINGS of Washington. Now let me just review where we are on this, just to put this into a time frame. The Protect America Act was first put into place last August, set to expire in February so they could work out the differences.

Now, the Senate had their proposal, as I mentioned, and as has been mentioned by our leader, passed by a big margin, 68–29.

The House has their version. There's nothing unusual with both Houses in a bicameral legislative body having two versions of the same issue. And the way you generally resolve that is to go to conference and work out the difference.

We have not had the opportunity, in this body, to go to conference with the Senate on this bill. Further, we have been denied time and time again to have an opportunity to even vote on the Senate amendments. By defeating the previous question, we will have that opportunity.

So I urge my colleagues to vote to defeat the previous question so we can amend the rule to have an opportunity to vote and address the Senate bill that passed overwhelmingly.

Mr. Speaker, I yield back the balance of my time.

Mr. ARCURI. Mr. Speaker, as I said earlier, we must bring the misinformation campaign and partisan wrangling to an end.

There is no question that there are groups and individuals out there who would seek to do America harm. There is no question that my colleagues and I want to give the people who protect us from the danger every tool they need to fight terrorism.

The proposal we will vote on today will, in fact, provide our Nation's Intelligence Community with the resources to prevent future acts of terrorism, while protecting the freedoms of our citizens under the Constitution.

I strongly urge a ''yes'' vote on the previous question and on the rule.

The material previously referred to by Mr. HASTINGS of Washington is as follows:

AMENDMENT TO H. RES. 1041 OFFERED BY MR. HASTINGS OF WASHINGTON

Strike section 2 and insert in lieu thereof the following:

''SEC. 2. Upon rejection of the motion to concur specified in section 1, a motion that the House concur in the Senate amendmemt to H.R. 3773 is hereby adopted.''.

(The information contained herein was provided by Democratic Minority on multiple occasions throughout the 109th Congress.)

THE VOTE ON THE PREVIOUS QUESTION: WHAT IT REALLY MEANS

This vote, the vote on whether to order the previous question on a special rule, is not merely a procedural vote. A vote against ordering the previous question is a vote against the Democratic majority agenda and a vote to allow the opposition, at least for the moment, to offer an alternative plan. It is a vote about what the House should be debating.

Mr. Clarence Cannon's Precedents of the House of Representatives, (VI, 308–311) describes the vote on the previous question on the rule as ''a motion to direct or control the consideration of the subject before the House being made by the Member in charge.'' To defeat the previous question is to give the opposition a chance to decide the subject before the House. Cannon cites the Speaker's ruling of January 13, 1920, to the effect that ''the refusal of the House to sustain the demand for the previous question passes the control of the resolution to the opposition'' in order to offer an amendment. On March 15, 1909, a member of the majority party offered a rule resolution. The House defeated

the previous question and a member of the opposition rose to a parliamentary inquiry, asking who was entitled to recognition. Speaker Joseph G. Cannon (R–Illinois) said: ''The previous question having been refused, the gentleman from New York, Mr. Fitzgerald, who had asked the gentleman to yield to him for an amendment, is entitled to the first recognition.''

Because the vote today may look bad for the Democratic majority they will say ''the vote on the previous question is simply a vote on whether to proceed to an immediate vote on adopting the resolution . . . . . [and] has no substantive legislative or policy implications whatsoever.'' But that is not what they have always said. Listen to the definition of the previous question used in the Floor Procedures Manual published by the Rules Committee in the 109th Congress, (page 56). Here's how the Rules Committee described the rule using information from Congressional Quarterly's ''American Congressional Dictionary'': ''If the previous question is defeated, control of debate shifts to the leading opposition member (usually the minority Floor Manager) who then manages an hour of debate and may offer a germane amendment to the pending business.''

Deschler's Procedure in the U.S. House of Representatives, the subchapter titled ''Amending Special Rules'' states: ''a refusal to order the previous question on such a rule [a special rule reported from the Committee on Rules] opens the resolution to amendment and further debate.'' (Chapter 21, section 21.2) Section 21.3 continues: Upon rejection of the motion for the previous question on a resolution reported from the Committee on Rules, control shifts to the Member leading the opposition to the previous question, who may offer a proper amendment or motion and who controls the time for debate thereon.''

Clearly, the vote on the previous question on a rule does have substantive policy implications. It is one of the only available tools for those who oppose the Democratic majority's agenda and allows those with alternative views the opportunity to offer an alternative plan.

Mr. ARCURI. Mr. Speaker, I yield back the balance of my time, and I move the previous question on the resolution.

The SPEAKER pro tempore. The question is on ordering the previous question

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

Mr. HASTINGS of Washington. Mr. Speaker, I object to the vote on the ground that a quorum is not present and make the point of order that a quorum is not present.

The SPEAKER pro tempore. Evidently a quorum is not present.

The Sergeant at Arms will notify absent Members.

The vote was taken by electronic device, and there were—yeas 217, nays 190, not voting 23, as follows:

[Roll No. 143]

YEAS—217

Abercrombie
Ackerman
Allen
Altmire
Andrews
Arcuri
Baca
Baird
Baldwin
Becerra
Berkley
Berman
Berry
Bishop (GA)
Bishop (NY)
Blumenauer
Boren
Boswell
Boucher
Boyd (FL)
Boyda (KS)
Brady (PA)
Braley (IA)
Brown, Corrine
Butterfield
Capps
Capuano
Cardoza
Carnahan
Carson
Castor
Chandler
Clarke
Clay
Cleaver
Clyburn
Cohen
Conyers
Costa
Costello
Courtney
Crowley
Cuellar
Cummings
Davis (AL)
Davis (CA)
Davis (IL)
DeFazio
DeGette
Delahunt
DeLauro
Dicks
Dingell
Doggett
Doyle
Edwards
Ellison
Ellsworth
Emanuel
Eshoo
Etheridge
Farr
Fattah
Filner
Foster
Frank (MA)
Giffords
Gillibrand
Gonzalez
Gordon
Green, Al
Green, Gene
Grijalva
Gutierrez
Hall (NY)
Hare
Harman
Hastings (FL)
Herseth Sandlin
Higgins
Hill
Hinchey
Hirono
Hodes
Holden
Holt
Honda
Hoyer
Inslee
Israel
Jackson (IL)
Jackson-Lee (TX)
Jefferson
Johnson (GA)
Johnson, E. B.
Jones (OH)
Kagen
Kanjorski
Kaptur
Kennedy
Kildee
Kilpatrick
Kind
Klein (FL)
Kucinich
Langevin
Larsen (WA)
Larson (CT)
Lee
Levin
Lewis (GA)
Lipinski
Loebsack
Lofgren, Zoe
Lowey
Lynch
Mahoney (FL)
Maloney (NY)
Markey
Marshall
Matheson
Matsui
McCarthy (NY)
McCollum (MN)
McDermott
McGovern
McIntyre
McNerney
McNulty
Meek (FL)
Melancon
Michaud
Miller (NC)
Miller, George
Mitchell
Mollohan
Moore (KS)
Moore (WI)
Moran (VA)
Murphy (CT)
Murphy, Patrick
Murtha
Nadler
Napolitano
Neal (MA)
Obey
Olver
Ortiz
Pallone
Pascrell
Pastor
Paul
Payne
Perlmuter
Peterson (MN)
Pomeroy
Price (NC)
Rahall
Reyes
Richardson
Rodriguez
Ross
Rothman
Roybal-Allard
Ruppersberger
Ryan (OH)
Salazar
Sánchez, Linda T.
Sanchez, Loretta
Sarbanes
Schakowsky
Schiff
Schwartz
Scott (GA)
Scott (VA)
Serrano
Sestak
Shea-Porter
Sherman
Shuler
Sires
Skelton
Slaughter
Smith (WA)
Snyder
Solis
Space
Spratt
Stark
Stupak
Sutton
Tanner
Tauscher
Taylor
Thompson (CA)
Thompson (MS)
Tierney
Towns
Tsongas
Udall (CO)
Udall (NM)
Van Hollen
Velázquez
Visclosky
Walz (MN)
Wasserman Schultz
Waters
Watson
Watt
Waxman
Weiner
Welch (VT)
Wexler
Wilson (OH)
Wu
Wynn
Yarmuth

NAYS—190

Aderholt
Akin
Alexander
Bachmann
Bachus
Barrett (SC)
Barrow
Bartlett (MD)
Barton (TX)
Bean
Biggert
Bilbray
Bilirakis
Bishop (UT)
Blackburn
Blunt
Boehner
Bonner
Bono Mack
Boozman
Brady (TX)
Broun (GA)
Brown (SC)
Buchanan
Burgess
Burton (IN)
Buyer
Calvert
Camp (MI)
Campbell (CA)
Cannon
Cantor
Capito
Carney
Carter
Castle
Chabot
Coble
Cole (OK)
Conaway
Cooper
Crenshaw
Culberson
Davis (KY)
Davis, David
Davis, Lincoln
Davis, Tom
Deal (GA)
Dent
Diaz-Balart, L.
Diaz-Balart, M.
Donnelly
Doolittle
Drake
Dreier
Duncan
Ehlers
Emerson
Engel
English (PA)
Everett
Fallin
Feeney
Ferguson
Flake
Forbes
Fortenberry
Fossella
Foxx
Franks (AZ)
Frelinghuysen
Gallegly
Garrett (NJ)
Gerlach
Gingrey
Gohmert
Goode
Goodlatte
Graves
Hall (TX)
Hastings (WA)
Hayes
Heller
Hensarling
Herger
Hobson
Hoekstra
Hulshof
Inglis (SC)
Issa
Johnson (IL)
Johnson, Sam
Jones (NC)
Jordan
Keller
King (IA)
King (NY)
Kingston
Kirk
Kline (MN)
Knollenberg
Kuhl (NY)
Lamborn
Lampson
Latham
LaTourette
Latta
Lewis (CA)
Lewis (KY)
Linder
LoBiondo
Lucas
Lungren, Daniel E.
Mack
Manzullo
Marchant
McCarthy (CA)
McCaul (TX)
McCotter
McCrery
McHenry
McHugh
McKeon
Mica
Miller (FL)
Miller (MI)
Miller, Gary
Moran (KS)
Murphy, Tim
Myrick
Neugebauer
Pearce
Pence
Petri
Pitts
Platts
Poe
Porter
Price (GA)
Pryce (OH)
Putnam
Radanovich
Ramstad
Regula
Rehberg
Reichert
Renzi
Reynolds
Rogers (AL)
Rogers (KY)
Rogers (MI)
Rohrabacher
Ros-Lehtinen
Roskam
Royce
Ryan (WI)
Sali
Saxton
Schmidt
Sensenbrenner
Sessions
Shadegg
Shays
Shimkus
Shuster
Simpson
Smith (NE)
Smith (NJ)
Smith (TX)
Souder
Stearns
Sullivan
Terry
Thornberry
Tiahrt
Tiberi
Turner
Upton
Walberg
Walden (OR)
Walsh (NY)
Wamp
Weldon (FL)
Westmoreland
Whitfield (KY)
Wilson (NM)
Wilson (SC)
Wittman (VA)
Wolf
Young (FL)

NOT VOTING—23

Boustany
Brown-Waite, Ginny
Cramer
Cubin
Gilchrest
Granger
Hinojosa
Hooley
Hunter
LaHood
McMorris Rodgers
Meeks (NY)
Musgrave
Nunes
Oberstar
Peterson (PA)
Pickering
Rangel
Rush
Tancredo
Weller
Woolsey
Young (AK)

□ 1148

Mr. MANZULLO changed his vote from ''yea'' to ''nay.''

Mr. BAIRD changed his vote from ''nay'' to ''yea.''

Mr. CARSON of Indiana changed his vote from ''present'' to ''yea.''

So the previous question was ordered.

The result of the vote was announced as above recorded.

The SPEAKER pro tempore. The question is on the resolution.

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

Mr. HASTINGS of Washington. Mr. Speaker, on that I demand the yeas and nays.

The yeas and nays were ordered.

The vote was taken by electronic device, and there were—yeas 221, nays 188, not voting 21, as follows:

[Roll No. 144]

YEAS—221

Abercrombie
Ackerman
Allen
Altmire
Andrews
Arcuri
Baca
Baird
Baldwin
Barrow
Bean
Becerra
Berkley
Berman
Berry
Bishop (GA)
Bishop (NY)
Blumenauer
Boren
Boswell
Boucher
Boyd (FL)
Boyda (KS)
Brady (PA)
Braley (IA)
Brown, Corrine
Butterfield
Capps
Capuano
Cardoza
Carnahan
Carney
Carson
Castor
Chandler
Clarke
Clay
Cleaver
Clyburn
Cohen
Conyers
Costa
Costello
Courtney
Crowley
Cuellar
Cummings
Davis (AL)
Davis (CA)
Davis (IL)
Davis, Lincoln
DeFazio
DeGette
Delahunt
DeLauro
Dicks
Dingell
Doggett
Donnelly
Doyle
Edwards
Ellison
Ellsworth
Emanuel
Eshoo
Etheridge
Farr
Fattah
Filner

Foster
Frank (MA)
Giffords
Gillibrand
Gonzalez
Gordon
Green, Al
Green, Gene
Grijalva
Gutierrez
Hall (NY)
Hare
Harman
Hastings (FL)
Herseth Sandlin
Higgins
Hill
Hinchey
Hirono
Hodes
Holden
Holt
Honda
Hoyer
Inslee
Israel
Jackson (IL)
Jackson-Lee (TX)
Jefferson
Johnson (GA)
Johnson, E. B.
Jones (OH)
Kagen
Kanjorski
Kaptur
Kennedy
Kildee
Kilpatrick
Kind
Klein (FL)
Kucinich
Langevin
Larsen (WA)
Larson (CT)
Lee
Levin
Lewis (GA)
Lipinski
Loebsack
Lofgren, Zoe
Lowey
Lynch
Mahoney (FL)
Maloney (NY)
Markey
Marshall
Matheson
Matsui
McCarthy (NY)
McCollum (MN)
McDermott
McGovern
McIntyre
McNerney
McNulty
Meek (FL)
Melancon
Michaud
Miller (NC)
Miller, George
Mitchell
Mollohan
Moore (KS)
Moore (WI)
Moran (VA)
Murphy (CT)
Murphy, Patrick
Murtha
Nadler
Napolitano
Neal (MA)
Obey
Olver
Ortiz
Pallone
Pascrell
Pastor
Payne
Perlmutter
Peterson (MN)
Pomeroy
Price (NC)
Rahall
Reyes
Richardson
Rodriguez
Ross
Rothman
Roybal-Allard
Ruppersberger
Ryan (OH)
Salazar
Sánchez, Linda T.
Sanchez, Loretta
Sarbanes
Schakowsky
Schiff
Schwartz
Scott (GA)
Scott (VA)
Serrano
Sestak
Shea-Porter
Sherman
Shuler
Sires
Skelton
Slaughter
Smith (WA)
Snyder
Solis
Space
Spratt
Stark
Stupak
Sutton
Tanner
Tauscher
Taylor
Thompson (CA)
Thompson (MS)
Tierney
Towns
Tsongas
Udall (CO)
Udall (NM)
Van Hollen
Velázquez
Visclosky
Walz (MN)
Wasserman Schultz
Waters
Watson
Watt
Waxman
Weiner
Welch (VT)
Wexler
Wilson (OH)
Wu
Wynn
Yarmuth

NAYS—188

Aderholt
Akin
Alexander
Bachmann
Bachus
Barrett (SC)
Bartlett (MD)
Barton (TX)
Biggert
Bilbray
Bilirakis
Bishop (UT)
Blackburn
Blunt
Boehner
Bonner
Bono Mack
Boozman
Brady (TX)
Broun (GA)
Brown (SC)
Buchanan
Burgess
Burton (IN)
Buyer
Calvert
Camp (MI)
Campbell (CA)
Cannon
Cantor
Capito
Carter
Castle
Chabot
Coble
Cole (OK)
Conaway
Cooper
Crenshaw
Culberson
Davis (KY)
Davis, David
Davis, Tom
Deal (GA)
Dent
Diaz-Balart, L.
Diaz-Balart, M.
Doolittle
Drake
Dreier
Duncan
Ehlers
Emerson
Engel
English (PA)
Everett
Fallin
Feeney
Ferguson
Flake
Forbes
Fortenberry
Fossella
Foxx
Franks (AZ)
Frelinghuysen
Gallegly
Garrett (NJ)
Gerlach
Gingrey
Gohmert
Goode
Goodlatte
Granger
Graves
Hall (TX)
Hastings (WA)
Hayes
Heller
Hensarling
Herger
Hobson
Hoekstra
Hulshof
Inglis (SC)
Issa
Johnson (IL)
Johnson, Sam
Jones (NC)
Jordan
Keller
King (IA)
King (NY)
Kingston
Kirk
Kline (MN)
Knollenberg
Kuhl (NY)
Lamborn
Lampson
Latham
LaTourette
Latta
Lewis (CA)
Lewis (KY)
Linder
LoBiondo
Lucas
Lungren, Daniel E.
Mack
Manzullo
Marchant
McCarthy (CA)
McCaul (TX)
McCotter
McCrery
McHenry
McHugh
McKeon
McMorris Rodgers
Mica
Miller (FL)
Miller (MI)
Miller, Gary
Moran (KS)
Murphy, Tim
Myrick
Neugebauer
Paul
Pearce
Pence
Petri
Pitts
Platts
Poe
Porter
Price (GA)
Pryce (OH)
Putnam
Radanovich
Ramstad
Regula
Rehberg
Reichert
Renzi
Reynolds
Rogers (AL)
Rogers (KY)
Rogers (MI)
Rohrabacher
Ros-Lehtinen
Roskam
Royce
Ryan (WI)
Sali
Saxton
Schmidt
Sensenbrenner
Sessions
Shadegg
Shays
Shimkus
Shuster
Simpson
Smith (NE)
Smith (NJ)
Smith (TX)
Souder
Stearns
Sullivan
Terry
Thornberry
Tiahrt
Tiberi
Turner
Upton
Walberg
Walden (OR)
Walsh (NY)
Wamp
Weldon (FL)
Westmoreland
Whitfield (KY)
Wilson (NM)
Wilson (SC)
Wittman (VA)
Wolf
Young (FL)

NOT VOTING—21

Boustany
Brown-Waite, Ginny
Cramer
Cubin
Gilchrest
Hinojosa
Hooley
Hunter
LaHood
Meeks (NY)
Musgrave
Nunes
Oberstar
Peterson (PA)
Pickering
Rangel
Rush
Tancredo
Weller
Woolsey
Young (AK)

□ 1205

So the resolution was agreed to.

The result of the vote was announced as above recorded.

A motion to reconsider was laid on the table.

PERSONAL EXPLANATION

Mr. HINOJOSA. Mr. Speaker, on rollcall Nos. 143 and 144, I was unavoidably detained. Had I been present, I would have voted "yea" on rollcall Nos. 143 and 144.

Mr. CONYERS. Mr. Speaker, pursuant to House Resolution 1041, I call up the bill (H.R. 3773) to amend the Foreign Intelligence Surveillance Act of 1978 to establish a procedure for authorizing certain acquisitions of foreign intelligence, and for other purposes, with a Senate amendment thereto, and ask for its immediate consideration in the House.

The Clerk read the title of the bill.

The SPEAKER pro tempore (Mr. ROSS). The Clerk will designate the Senate amendment.

The text of the Senate amendment is as follows:

Senate amendment:

Strike out all after the enacting clause and insert:

SECTION 1. SHORT TITLE; TABLE OF CONTENTS.

(a) SHORT TITLE.—This Act may be cited as the ''Foreign Intelligence Surveillance Act of 1978 Amendments Act of 2008'' or the ''FISA Amendments Act of 2008''.

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

TITLE I—FOREIGN INTELLIGENCE SURVEILLANCE

SEC. 101. ADDITIONAL PROCEDURES REGARDING CERTAIN PERSONS OUTSIDE THE UNITED STATES.

(a) IN GENERAL.—The Foreign Intelligence Surveillance Act of 1978 (50 U.S.C. 1801 et seq.) is amended—

(1) by striking title VII; and

(2) by adding after title VI the following new title:

''TITLE VII—ADDITIONAL PROCEDURES REGARDING CERTAIN PERSONS OUTSIDE THE UNITED STATES

''SEC. 701. LIMITATION ON DEFINITION OF ELECTRONIC SURVEILLANCE.

''Nothing in the definition of electronic surveillance under section 101(f) shall be construed to encompass surveillance that is targeted in accordance with this title at a person reasonably believed to be located outside the United States.

''SEC. 702. DEFINITIONS.

''(a) IN GENERAL.—The terms 'agent of a foreign power', 'Attorney General', 'contents', 'electronic surveillance', 'foreign intelligence information', 'foreign power', 'minimization procedures', 'person', 'United States', and 'United States person' shall have the meanings given such terms in section 101, except as specifically provided in this title.

''(b) ADDITIONAL DEFINITIONS.—

''(1) CONGRESSIONAL INTELLIGENCE COMMITTEES.—The term 'congressional intelligence committees' means—

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

''(B) the Permanent Select Committee on Intelligence of the House of Representatives.

''(2) FOREIGN INTELLIGENCE SURVEILLANCE COURT; COURT.—The terms 'Foreign Intelligence Surveillance Court' and 'Court' mean the court established by section 103(a).

''(3) FOREIGN INTELLIGENCE SURVEILLANCE COURT OF REVIEW; COURT OF REVIEW.—The terms 'Foreign Intelligence Surveillance Court of Review' and 'Court of Review' mean the court established by section 103(b).

''(4) ELECTRONIC COMMUNICATION SERVICE PROVIDER.—The term 'electronic communication service provider' means—

''(A) a telecommunications carrier, as that term is defined in section 3 of the Communications Act of 1934 (47 U.S.C. 153);

''(B) a provider of electronic communication service, as that term is defined in section 2510 of title 18, United States Code;

''(C) a provider of a remote computing service, as that term is defined in section 2711 of title 18, United States Code;

''(D) any other communication service provider who has access to wire or electronic communications either as such communications are transmitted or as such communications are stored; or

''(E) an officer, employee, or agent of an entity described in subparagraph (A), (B), (C), or (D).

''(5) ELEMENT OF THE INTELLIGENCE COMMUNITY.—The term 'element of the intelligence community' means an element of the intelligence community specified in or designated under section 3(4) of the National Security Act of 1947 (50 U.S.C. 401a(4)).

"SEC. 703. PROCEDURES FOR TARGETING CERTAIN PERSONS OUTSIDE THE UNITED STATES OTHER THAN UNITED STATES PERSONS.

''(a) AUTHORIZATION.—Notwithstanding any other law, the Attorney General and the Director of National Intelligence may authorize jointly, for periods of up to 1 year, the targeting of persons reasonably believed to be located outside the United States to acquire foreign intelligence information.

''(b) LIMITATIONS.—An acquisition authorized under subsection (a)—

''(1) may not intentionally target any person known at the time of acquisition to be located in the United States;

''(2) may not intentionally target a person reasonably believed to be located outside the United States if the purpose of such acquisition is to target a particular, known person reasonably believed to be in the United States, except in accordance with title I or title III;

''(3) may not intentionally target a United States person reasonably believed to be located outside the United States, except in accordance with sections 704, 705, or 706;

''(4) shall not intentionally acquire any communication as to which the sender and all intended recipients are known at the time of the acquisition to be located in the United States; and

''(5) shall be conducted in a manner consistent with the fourth amendment to the Constitution of the United States.

''(c) CONDUCT OF ACQUISITION.—An acquisition authorized under subsection (a) may be conducted only in accordance with—

''(1) a certification made by the Attorney General and the Director of National Intelligence pursuant to subsection (f); and

''(2) the targeting and minimization procedures required pursuant to subsections (d) and (e).

''(d) TARGETING PROCEDURES.—

''(1) REQUIREMENT TO ADOPT.—The Attorney General, in consultation with the Director of National Intelligence, shall adopt targeting procedures that are reasonably designed to ensure that any acquisition authorized under subsection (a) is limited to targeting persons reasonably believed to be located outside the United States and does not result in the intentional acquisition of any communication as to which the sender and all intended recipients are known at the time of the acquisition to be located in the United States.

''(2) JUDICIAL REVIEW.—The procedures referred to in paragraph (1) shall be subject to judicial review pursuant to subsection (h).

''(e) MINIMIZATION PROCEDURES.—

''(1) REQUIREMENT TO ADOPT.—The Attorney General, in consultation with the Director of National Intelligence, shall adopt minimization procedures that meet the definition of minimization procedures under section 101(h) or section 301(4) for acquisitions authorized under subsection (a).

''(2) JUDICIAL REVIEW.—The minimization procedures required by this subsection shall be subject to judicial review pursuant to subsection (h).

''(f) CERTIFICATION.—

''(1) IN GENERAL.—

''(A) REQUIREMENT.—Subject to subparagraph (B), prior to the initiation of an acquisition authorized under subsection (a), the Attorney General and the Director of National Intelligence shall provide, under oath, a written certification, as described in this subsection.

''(B) EXCEPTION.—If the Attorney General and the Director of National Intelligence determine that immediate action by the Government is required and time does not permit the preparation of a certification under this subsection prior to the initiation of an acquisition, the Attorney General and the Director of National Intelligence shall prepare such certification, including such determination, as soon as possible but in no event more than 7 days after such determination is made.

''(2) REQUIREMENTS.—A certification made under this subsection shall—

''(A) attest that—

''(i) there are reasonable procedures in place for determining that the acquisition authorized under subsection (a) is targeted at persons reasonably believed to be located outside the United States and that such procedures have been approved by, or will be submitted in not more than 5 days for approval by, the Foreign Intelligence Surveillance Court pursuant to subsection (h);

''(ii) there are reasonable procedures in place for determining that the acquisition authorized under subsection (a) does not result in the intentional acquisition of any communication as to which the sender and all intended recipients are known at the time of the acquisition to be located in the United States, and that such procedures have been approved by, or will be submitted in not more than 5 days for approval by, the Foreign Intelligence Surveillance Court pursuant to subsection (h);

''(iii) the procedures referred to in clauses (i) and (ii) are consistent with the requirements of the fourth amendment to the Constitution of the United States and do not permit the intentional targeting of any person who is known at the time of acquisition to be located in the United States or the intentional acquisition of any communication as to which the sender and all intended recipients are known at the time of acquisition to be located in the United States;

''(iv) a significant purpose of the acquisition is to obtain foreign intelligence information;

''(v) the minimization procedures to be used with respect to such acquisition—

''(I) meet the definition of minimization procedures under section 101(h) or section 301(4); and

''(II) have been approved by, or will be submitted in not more than 5 days for approval by, the Foreign Intelligence Surveillance Court pursuant to subsection (h);

''(vi) the acquisition involves obtaining the foreign intelligence information from or with the assistance of an electronic communication service provider; and

''(vii) the acquisition does not constitute electronic surveillance, as limited by section 701; and

''(B) be supported, as appropriate, by the affidavit of any appropriate official in the area of national security who is—

''(i) appointed by the President, by and with the consent of the Senate; or

''(ii) the head of any element of the intelligence community.

''(3) LIMITATION.—A certification made under this subsection is not required to identify the specific facilities, places, premises, or property at which the acquisition authorized under subsection (a) will be directed or conducted.

''(4) SUBMISSION TO THE COURT.—The Attorney General shall transmit a copy of a certification made under this subsection, and any supporting affidavit, under seal to the Foreign Intelligence Surveillance Court as soon as possible, but in no event more than 5 days after such certification is made. Such certification shall be maintained under security measures adopted by the Chief Justice of the United States and the Attorney General, in consultation with the Director of National Intelligence.

''(5) REVIEW.—The certification required by this subsection shall be subject to judicial review pursuant to subsection (h).

''(g) DIRECTIVES AND JUDICIAL REVIEW OF DIRECTIVES.—

''(1) AUTHORITY.—With respect to an acquisition authorized under subsection (a), the Attorney General and the Director of National Intelligence may direct, in writing, an electronic communication service provider to—

''(A) immediately provide the Government with all information, facilities, or assistance necessary to accomplish the acquisition in a manner that will protect the secrecy of the acquisition and produce a minimum of interference with the services that such electronic communication service provider is providing to the target; and

''(B) maintain under security procedures approved by the Attorney General and the Director of National Intelligence any records concerning the acquisition or the aid furnished that such electronic communication service provider wishes to maintain.

''(2) COMPENSATION.—The Government shall compensate, at the prevailing rate, an electronic communication service provider for providing information, facilities, or assistance pursuant to paragraph (1).

''(3) RELEASE FROM LIABILITY.—Notwithstanding any other law, no cause of action shall lie in any court against any electronic communication service provider for providing any information, facilities, or assistance in accordance with a directive issued pursuant to paragraph (1).

''(4) CHALLENGING OF DIRECTIVES.—

''(A) AUTHORITY TO CHALLENGE.—An electronic communication service provider receiving a directive issued pursuant to paragraph (1) may challenge the directive by filing a petition with the Foreign Intelligence Surveillance Court, which shall have jurisdiction to review such a petition.

''(B) ASSIGNMENT.—The presiding judge of the Court shall assign the petition filed under subparagraph (A) to 1 of the judges serving in the pool established by section 103(e)(1) not later than 24 hours after the filing of the petition.

''(C) STANDARDS FOR REVIEW.—A judge considering a petition to modify or set aside a directive may grant such petition only if the judge finds that the directive does not meet the requirements of this section, or is otherwise unlawful.

''(D) PROCEDURES FOR INITIAL REVIEW.—A judge shall conduct an initial review not later than 5 days after being assigned a petition described in subparagraph (C). If the judge determines that the petition consists of claims, defenses, or other legal contentions that are not warranted by existing law or by a nonfrivolous argument for extending, modifying, or reversing existing law or for establishing new law, the judge shall immediately deny the petition and affirm the directive or any part of the directive that is the subject of the petition and order the recipient to comply with the directive or any part of it. Upon making such a determination or promptly thereafter, the judge shall provide a written statement for the record of the reasons for a determination under this subparagraph.

''(E) PROCEDURES FOR PLENARY REVIEW.—If a judge determines that a petition described in subparagraph (C) requires plenary review, the judge shall affirm, modify, or set aside the directive that is the subject of that petition not later than 30 days after being assigned the petition, unless the judge, by order for reasons stated, extends that time as necessary to comport with the due process clause of the fifth amendment to the Constitution of the United States. Unless the judge sets aside the directive, the judge shall immediately affirm or affirm with modifications the directive, and order the recipient to comply with the directive in its entirety or as modified. The judge shall provide a written statement for the records of the reasons for a determination under this subparagraph.

''(F) CONTINUED EFFECT.—Any directive not explicitly modified or set aside under this paragraph shall remain in full effect.

''(G) CONTEMPT OF COURT.—Failure to obey an order of the Court issued under this paragraph may be punished by the Court as contempt of court.

''(5) ENFORCEMENT OF DIRECTIVES.—

''(A) ORDER TO COMPEL.—In the case of a failure to comply with a directive issued pursuant to paragraph (1), the Attorney General may file a petition for an order to compel compliance with the directive with the Foreign Intelligence Surveillance Court, which shall have jurisdiction to review such a petition.

''(B) ASSIGNMENT.—The presiding judge of the Court shall assign a petition filed under subparagraph (A) to 1 of the judges serving in the pool established by section 103(e)(1) not later than 24 hours after the filing of the petition.

''(C) STANDARDS FOR REVIEW.—A judge considering a petition filed under subparagraph (A) shall issue an order requiring the electronic communication service provider to comply with the directive or any part of it, as issued or as modified, if the judge finds that the directive meets the requirements of this section, and is otherwise lawful.

''(D) PROCEDURES FOR REVIEW.—The judge shall render a determination not later than 30 days after being assigned a petition filed under subparagraph (A), unless the judge, by order for reasons stated, extends that time if necessary to comport with the due process clause of the fifth amendment to the Constitution of the United States. The judge shall provide a written statement for the record of the reasons for a determination under this paragraph.

''(E) CONTEMPT OF COURT.—Failure to obey an order of the Court issued under this paragraph may be punished by the Court as contempt of court.

''(F) PROCESS.—Any process under this paragraph may be served in any judicial district in which the electronic communication service provider may be found.

''(6) APPEAL.—

''(A) APPEAL TO THE COURT OF REVIEW.—The Government or an electronic communication service provider receiving a directive issued pursuant to paragraph (1) may file a petition with the Foreign Intelligence Surveillance Court of Review for review of the decision issued pursuant to paragraph (4) or (5). The Court of Review shall have jurisdiction to consider such a petition and shall provide a written statement for the record of the reasons for a decision under this paragraph.

''(B) CERTIORARI TO THE SUPREME COURT.—The Government or an electronic communication service provider receiving a directive issued pursuant to paragraph (1) may file a petition for a writ of certiorari for review of the decision of the Court of Review issued under subparagraph (A). The record for such review shall be transmitted under seal to the Supreme Court of the United States, which shall have jurisdiction to review such decision.

''(h) JUDICIAL REVIEW OF CERTIFICATIONS AND PROCEDURES.—

''(1) IN GENERAL.—

''(A) REVIEW BY THE FOREIGN INTELLIGENCE SURVEILLANCE COURT.—The Foreign Intelligence Surveillance Court shall have jurisdiction to review any certification required by subsection (c) and the targeting and minimization procedures adopted pursuant to subsections (d) and (e).

''(B) SUBMISSION TO THE COURT.—The Attorney General shall submit to the Court any such certification or procedure, or amendment thereto, not later than 5 days after making or amending the certification or adopting or amending the procedures.

''(2) CERTIFICATIONS.—The Court shall review a certification provided under subsection (f) to determine whether the certification contains all the required elements.

''(3) TARGETING PROCEDURES.—The Court shall review the targeting procedures required by subsection (d) to assess whether the procedures are reasonably designed to ensure that the acquisition authorized under subsection (a) is limited to the targeting of persons reasonably believed to be located outside the United States and does not result in the intentional acquisition of any communication as to which the sender and all intended recipients are known at the time of the acquisition to be located in the United States.

''(4) MINIMIZATION PROCEDURES.—The Court shall review the minimization procedures required by subsection (e) to assess whether such procedures meet the definition of minimization procedures under section 101(h) or section 301(4).

''(5) ORDERS.—

''(A) APPROVAL.—If the Court finds that a certification required by subsection (f) contains all of the required elements and that the targeting and minimization procedures required by subsections (d) and (e) are consistent with the requirements of those subsections and with the fourth amendment to the Constitution of the United States, the Court shall enter an order approving the continued use of the procedures for the acquisition authorized under subsection (a).

''(B) CORRECTION OF DEFICIENCIES.—If the Court finds that a certification required by subsection (f) does not contain all of the required elements, or that the procedures required by subsections (d) and (e) are not consistent with the requirements of those subsections or the fourth amendment to the Constitution of the United States, the Court shall issue an order directing the Government to, at the Government's election and to the extent required by the Court's order—

''(i) correct any deficiency identified by the Court's order not later than 30 days after the date the Court issues the order; or

''(ii) cease the acquisition authorized under subsection (a).

''(C) REQUIREMENT FOR WRITTEN STATEMENT.—In support of its orders under this subsection, the Court shall provide, simultaneously with the orders, for the record a written statement of its reasons.

''(6) APPEAL.—

''(A) APPEAL TO THE COURT OF REVIEW.—The Government may appeal any order under this section to the Foreign Intelligence Surveillance Court of Review, which shall have jurisdiction to review such order. For any decision affirming, reversing, or modifying an order of the Foreign Intelligence Surveillance Court, the Court of Review shall provide for the record a written statement of its reasons.

''(B) CONTINUATION OF ACQUISITION PENDING REHEARING OR APPEAL.—Any acquisitions affected by an order under paragraph (5)(B) may continue—

''(i) during the pendency of any rehearing of the order by the Court en banc; and

''(ii) if the Government appeals an order under this section, until the Court of Review enters an order under subparagraph (C).

''(C) IMPLEMENTATION PENDING APPEAL.—Not later than 60 days after the filing of an appeal of an order under paragraph (5)(B) directing the correction of a deficiency, the Court of Review shall determine, and enter a corresponding order regarding, whether all or any part of the correction order, as issued or modified, shall be implemented during the pendency of the appeal.

''(D) CERTIORARI TO THE SUPREME COURT.—The Government may file a petition for a writ of certiorari for review of a decision of the Court of Review issued under subparagraph (A). The record for such review shall be transmitted under seal to the Supreme Court of the United States, which shall have jurisdiction to review such decision.

''(i) EXPEDITED JUDICIAL PROCEEDINGS.—Judicial proceedings under this section shall be conducted as expeditiously as possible.

''(j) MAINTENANCE AND SECURITY OF RECORDS AND PROCEEDINGS.—

''(1) STANDARDS.—A record of a proceeding under this section, including petitions filed, orders granted, and statements of reasons for decision, shall be maintained under security measures adopted by the Chief Justice of the United States, in consultation with the Attorney General and the Director of National Intelligence.

''(2) FILING AND REVIEW.—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.

''(3) RETENTION OF RECORDS.—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.

''(k) ASSESSMENTS AND REVIEWS.—

''(1) SEMIANNUAL ASSESSMENT.—Not less frequently than once every 6 months, the Attorney General and Director of National Intelligence shall assess compliance with the targeting and minimization procedures required by subsections (e) and (f) and shall submit each such assessment to—

''(A) the Foreign Intelligence Surveillance Court; and

''(B) the congressional intelligence committees.

''(2) AGENCY ASSESSMENT.—The Inspectors General of the Department of Justice and of any element of the intelligence community authorized to acquire foreign intelligence information under subsection (a) with respect to their department, agency, or element—

''(A) are authorized to review the compliance with the targeting and minimization procedures required by subsections (d) and (e);

''(B) with respect to acquisitions authorized under subsection (a), shall review the number of disseminated intelligence reports containing a reference to a United States person identity and the number of United States person identities subsequently disseminated by the element concerned in response to requests for identities that were not referred to by name or title in the original reporting;

''(C) with respect to acquisitions authorized under subsection (a), shall review the number of targets that were later determined to be located in the United States and, to the extent possible, whether their communications were reviewed; and

''(D) shall provide each such review to—

''(i) the Attorney General;

''(ii) the Director of National Intelligence; and

''(iii) the congressional intelligence committees.

''(3) ANNUAL REVIEW.—

''(A) REQUIREMENT TO CONDUCT.—The head of an element of the intelligence community conducting an acquisition authorized under subsection (a) shall direct the element to conduct an annual review to determine whether there is reason to believe that foreign intelligence information has been or will be obtained from the acquisition. The annual review shall provide, with respect to such acquisitions authorized under subsection (a)—

''(i) an accounting of the number of disseminated intelligence reports containing a reference to a United States person identity;

''(ii) an accounting of the number of United States person identities subsequently disseminated by that element in response to requests for identities that were not referred to by name or title in the original reporting;

''(iii) the number of targets that were later determined to be located in the United States and, to the extent possible, whether their communications were reviewed; and

''(iv) a description of any procedures developed by the head of an element of the intelligence community and approved by the Director of National Intelligence to assess, in a manner consistent with national security, operational requirements and the privacy interests of United States persons, the extent to which the acquisitions authorized under subsection (a) acquire the communications of United States persons, as well as the results of any such assessment.

''(B) USE OF REVIEW.—The head of each element of the intelligence community that conducts an annual review under subparagraph (A) shall use each such review to evaluate the adequacy of the minimization procedures utilized by such element or the application of the minimization procedures to a particular acquisition authorized under subsection (a).

''(C) PROVISION OF REVIEW.—The head of each element of the intelligence community that conducts an annual review under subparagraph (A) shall provide such review to—

''(i) the Foreign Intelligence Surveillance Court;

''(ii) the Attorney General;

''(iii) the Director of National Intelligence; and

''(iv) the congressional intelligence committees.

"SEC. 704. CERTAIN ACQUISITIONS INSIDE THE UNITED STATES OF UNITED STATES PERSONS OUTSIDE THE UNITED STATES.

''(a) JURISDICTION OF THE FOREIGN INTELLIGENCE SURVEILLANCE COURT.—

''(1) IN GENERAL.—The Foreign Intelligence Surveillance Court shall have jurisdiction to enter an order approving the targeting of a United States person reasonably believed to be located outside the United States to acquire foreign intelligence information, if such acquisition constitutes electronic surveillance (as defined in section 101(f), regardless of the limitation of section 701) or the acquisition of stored electronic communications or stored electronic data that requires an order under this Act, and such acquisition is conducted within the United States.

''(2) LIMITATION.—In the event that a United States person targeted under this subsection is reasonably believed to be located in the United States during the pendency of an order issued pursuant to subsection (c), such acquisition shall cease until authority, other than under this section, is obtained pursuant to this Act or the targeted United States person is again reasonably believed to be located outside the United States during the pendency of an order issued pursuant to subsection (c).

''(b) APPLICATION.—

''(1) IN GENERAL.—Each application for an order under this section shall be made by a Federal officer in writing upon oath or affirmation to a judge having jurisdiction under subsection (a)(1). Each application shall require the approval of the Attorney General based upon the Attorney General's finding that it satisfies the criteria and requirements of such application, as set forth in this section, and shall include—

''(A) the identity of the Federal officer making the application;

''(B) the identity, if known, or a description of the United States person who is the target of the acquisition;

''(C) a statement of the facts and circumstances relied upon to justify the applicant's belief that the United States person who is the target of the acquisition is—

''(i) a person reasonably believed to be located outside the United States; and

''(ii) a foreign power, an agent of a foreign power, or an officer or employee of a foreign power;

''(D) a statement of the proposed minimization procedures that meet the definition of minimization procedures under section 101(h) or section 301(4);

''(E) a description of the nature of the information sought and the type of communications or activities to be subjected to acquisition;

''(F) a certification made by the Attorney General or an official specified in section 104(a)(6) that—

''(i) the certifying official deems the information sought to be foreign intelligence information;

''(ii) a significant purpose of the acquisition is to obtain foreign intelligence information;

''(iii) such information cannot reasonably be obtained by normal investigative techniques;

''(iv) designates the type of foreign intelligence information being sought according to the categories described in section 101(e); and

''(v) includes a statement of the basis for the certification that—

''(I) the information sought is the type of foreign intelligence information designated; and

''(II) such information cannot reasonably be obtained by normal investigative techniques;

''(G) a summary statement of the means by which the acquisition will be conducted and whether physical entry is required to effect the acquisition;

''(H) the identity of any electronic communication service provider necessary to effect the acquisition, provided, however, that the application is not required to identify the specific facilities, places, premises, or property at which the acquisition authorized under this section will be directed or conducted;

''(I) a statement of the facts concerning any previous applications that have been made to any judge of the Foreign Intelligence Surveillance Court involving the United States person specified in the application and the action taken on each previous application; and

''(J) a statement of the period of time for which the acquisition is required to be maintained, provided that such period of time shall not exceed 90 days per application.

''(2) OTHER REQUIREMENTS OF THE ATTORNEY GENERAL.—The Attorney General may require any other affidavit or certification from any other officer in connection with the application.

''(3) OTHER REQUIREMENTS OF THE JUDGE.—The judge may require the applicant to furnish such other information as may be necessary to make the findings required by subsection (c)(1).

''(c) ORDER.—

''(1) FINDINGS.—Upon an application made pursuant to subsection (b), the Foreign Intelligence Surveillance Court shall enter an ex parte order as requested or as modified approving the acquisition if the Court finds that—

''(A) the application has been made by a Federal officer and approved by the Attorney General;

''(B) on the basis of the facts submitted by the applicant, for the United States person who is the target of the acquisition, there is probable cause to believe that the target is—

''(i) a person reasonably believed to be located outside the United States; and

''(ii) a foreign power, an agent of a foreign power, or an officer or employee of a foreign power;

''(C) the proposed minimization procedures meet the definition of minimization procedures under section 101(h) or section 301(4); and

''(D) the application which has been filed contains all statements and certifications required by subsection (b) and the certification or certifications are not clearly erroneous on the basis of the statement made under subsection (b)(1)(F)(v) and any other information furnished under subsection (b)(3).

''(2) PROBABLE CAUSE.—In determining whether or not probable cause exists for purposes of an order under paragraph (1), a judge having jurisdiction under subsection (a)(1) may consider past activities of the target, as well as facts and circumstances relating to current or future activities of the target. However, no United States person may be considered a foreign power, agent of a foreign power, or officer or employee of a foreign power solely upon the basis of activities protected by the first amendment to the Constitution of the United States.

''(3) REVIEW.—

''(A) LIMITATION ON REVIEW.—Review by a judge having jurisdiction under subsection (a)(1) shall be limited to that required to make the findings described in paragraph (1).

''(B) REVIEW OF PROBABLE CAUSE.—If the judge determines that the facts submitted under subsection (b) are insufficient to establish probable cause to issue an order under paragraph (1), the judge shall enter an order so stating and provide a written statement for the record of the reasons for such determination. The Government may appeal an order under this clause pursuant to subsection (f).

''(C) REVIEW OF MINIMIZATION PROCEDURES.—If the judge determines that the proposed minimization procedures required under paragraph (1)(C) do not meet the definition of minimization procedures under section 101(h) or section 301(4), the judge shall enter an order so stating and provide a written statement for the record of the reasons for such determination. The Government may appeal an order under this clause pursuant to subsection (f).

''(D) REVIEW OF CERTIFICATION.—If the judge determines that an application required by subsection (b) does not contain all of the required elements, or that the certification or certifications are clearly erroneous on the basis of the statement made under subsection (b)(1)(F)(v) and any other information furnished under subsection (b)(3), the judge shall enter an order so stating and provide a written statement for the record of the reasons for such determination. The Government may appeal an order under this clause pursuant to subsection (f).

''(4) SPECIFICATIONS.—An order approving an acquisition under this subsection shall specify—

''(A) the identity, if known, or a description of the United States person who is the target of the acquisition identified or described in the application pursuant to subsection (b)(1)(B);

''(B) if provided in the application pursuant to subsection (b)(1)(H), the nature and location of each of the facilities or places at which the acquisition will be directed;

''(C) the nature of the information sought to be acquired and the type of communications or activities to be subjected to acquisition;

''(D) the means by which the acquisition will be conducted and whether physical entry is required to effect the acquisition; and

''(E) the period of time during which the acquisition is approved.

''(5) DIRECTIONS.—An order approving acquisitions under this subsection shall direct—

''(A) that the minimization procedures be followed;

''(B) an electronic communication service provider to provide to the Government forthwith all information, facilities, or assistance necessary to accomplish the acquisition authorized under this subsection in a manner that will protect the secrecy of the acquisition and produce a minimum of interference with the services that such electronic communication service provider is providing to the target;

''(C) an electronic communication service provider to maintain under security procedures approved by the Attorney General any records concerning the acquisition or the aid furnished that such electronic communication service provider wishes to maintain; and

''(D) that the Government compensate, at the prevailing rate, such electronic communication service provider for providing such information, facilities, or assistance.

''(6) DURATION.—An order approved under this paragraph shall be effective for a period not to exceed 90 days and such order may be renewed for additional 90-day periods upon submission of renewal applications meeting the requirements of subsection (b).

''(7) COMPLIANCE.—At or prior to the end of the period of time for which an acquisition is approved by an order or extension under this section, the judge may assess compliance with the minimization procedures by reviewing the circumstances under which information concerning United States persons was acquired, retained, or disseminated.

''(d) EMERGENCY AUTHORIZATION.—

''(1) AUTHORITY FOR EMERGENCY AUTHORIZATION.—Notwithstanding any other provision of this Act, if the Attorney General reasonably determines that—

''(A) an emergency situation exists with respect to the acquisition of foreign intelligence

information for which an order may be obtained under subsection (c) before an order authorizing such acquisition can with due diligence be obtained, and

''(B) the factual basis for issuance of an order under this subsection to approve such acquisition exists,

the Attorney General may authorize the emergency acquisition if a judge having jurisdiction under subsection (a)(1) is informed by the Attorney General, or a designee of the Attorney General, at the time of such authorization that the decision has been made to conduct such acquisition and if an application in accordance with this subsection is made to a judge of the Foreign Intelligence Surveillance Court as soon as practicable, but not more than 7 days after the Attorney General authorizes such acquisition.

''(2) MINIMIZATION PROCEDURES.—If the Attorney General authorizes such emergency acquisition, the Attorney General shall require that the minimization procedures required by this section for the issuance of a judicial order be followed.

''(3) TERMINATION OF EMERGENCY AUTHORIZATION.—In the absence of a judicial order approving such acquisition, the acquisition shall terminate when the information sought is obtained, when the application for the order is denied, or after the expiration of 7 days from the time of authorization by the Attorney General, whichever is earliest.

''(4) USE OF INFORMATION.—In the event that such application for approval is denied, or in any other case where the acquisition is terminated and no order is issued approving the acquisition, no information obtained or evidence derived from such acquisition, except under circumstances in which the target of the acquisition is determined not to be a United States person during the pendency of the 7-day emergency acquisition period, shall be received in evidence or otherwise disclosed in any trial, hearing, or other proceeding in or before any court, grand jury, department, office, agency, regulatory body, legislative committee, or other authority of the United States, a State, or political subdivision thereof, and no information concerning any United States person acquired from such acquisition shall subsequently be used or disclosed in any other manner by Federal officers or employees without the consent of such person, except with the approval of the Attorney General if the information indicates a threat of death or serious bodily harm to any person.

''(e) RELEASE FROM LIABILITY.—Notwithstanding any other law, no cause of action shall lie in any court against any electronic communication service provider for providing any information, facilities, or assistance in accordance with an order or request for emergency assistance issued pursuant to subsections (c) or (d).

''(f) APPEAL.—

''(1) APPEAL TO THE FOREIGN INTELLIGENCE SURVEILLANCE COURT OF REVIEW.—The Government may file an appeal with the Foreign Intelligence Surveillance Court of Review for review of an order issued pursuant to subsection (c). The Court of Review shall have jurisdiction to consider such appeal and shall provide a written statement for the record of the reasons for a decision under this paragraph.

''(2) CERTIORARI TO THE SUPREME COURT.—The Government may file a petition for a writ of certiorari for review of the decision of the Court of Review issued under paragraph (1). The record for such review shall be transmitted under seal to the Supreme Court of the United States, which shall have jurisdiction to review such decision.

''SEC. 705. OTHER ACQUISITIONS TARGETING UNITED STATES PERSONS OUTSIDE THE UNITED STATES.

''(a) JURISDICTION AND SCOPE.—

''(1) JURISDICTION.—The Foreign Intelligence Surveillance Court shall have jurisdiction to enter an order pursuant to subsection (c).

''(2) SCOPE.—No element of the intelligence community may intentionally target, for the purpose of acquiring foreign intelligence information, a United States person reasonably believed to be located outside the United States under circumstances in which the targeted United States person has a reasonable expectation of privacy and a warrant would be required if the acquisition were conducted inside the United States for law enforcement purposes, unless a judge of the Foreign Intelligence Surveillance Court has entered an order or the Attorney General has authorized an emergency acquisition pursuant to subsections (c) or (d) or any other provision of this Act.

''(3) LIMITATIONS.—

''(A) MOVING OR MISIDENTIFIED TARGETS.—In the event that the targeted United States person is reasonably believed to be in the United States during the pendency of an order issued pursuant to subsection (c), such acquisition shall cease until authority is obtained pursuant to this Act or the targeted United States person is again reasonably believed to be located outside the United States during the pendency of an order issued pursuant to subsection (c).

''(B) APPLICABILITY.—If the acquisition is to be conducted inside the United States and could be authorized under section 704, the procedures of section 704 shall apply, unless an order or emergency acquisition authority has been obtained under a provision of this Act other than under this section.

''(b) APPLICATION.—Each application for an order under this section shall be made by a Federal officer in writing upon oath or affirmation to a judge having jurisdiction under subsection (a)(1). Each application shall require the approval of the Attorney General based upon the Attorney General's finding that it satisfies the criteria and requirements of such application as set forth in this section and shall include—

''(1) the identity, if known, or a description of the specific United States person who is the target of the acquisition;

''(2) a statement of the facts and circumstances relied upon to justify the applicant's belief that the United States person who is the target of the acquisition is—

''(A) a person reasonably believed to be located outside the United States; and

''(B) a foreign power, an agent of a foreign power, or an officer or employee of a foreign power;

''(3) a statement of the proposed minimization procedures that meet the definition of minimization procedures under section 101(h) or section 301(4);

''(4) a certification made by the Attorney General, an official specified in section 104(a)(6), or the head of an element of the intelligence community that—

''(A) the certifying official deems the information sought to be foreign intelligence information; and

''(B) a significant purpose of the acquisition is to obtain foreign intelligence information;

''(5) a statement of the facts concerning any previous applications that have been made to any judge of the Foreign Intelligence Surveillance Court involving the United States person specified in the application and the action taken on each previous application; and

''(6) a statement of the period of time for which the acquisition is required to be maintained, provided that such period of time shall not exceed 90 days per application.

''(c) ORDER.—

''(1) FINDINGS.—If, upon an application made pursuant to subsection (b), a judge having jurisdiction under subsection (a) finds that—

''(A) on the basis of the facts submitted by the applicant, for the United States person who is the target of the acquisition, there is probable cause to believe that the target is—

''(i) a person reasonably believed to be located outside the United States; and

''(ii) a foreign power, an agent of a foreign power, or an officer or employee of a foreign power;

''(B) the proposed minimization procedures, with respect to their dissemination provisions, meet the definition of minimization procedures under section 101(h) or section 301(4); and

''(C) the application which has been filed contains all statements and certifications required by subsection (b) and the certification provided under subsection (b)(4) is not clearly erroneous on the basis of the information furnished under subsection (b),

the Court shall issue an ex parte order so stating.

''(2) PROBABLE CAUSE.—In determining whether or not probable cause exists for purposes of an order under paragraph (1)(A), a judge having jurisdiction under subsection (a)(1) may consider past activities of the target, as well as facts and circumstances relating to current or future activities of the target. However, no United States person may be considered a foreign power, agent of a foreign power, or officer or employee of a foreign power solely upon the basis of activities protected by the first amendment to the Constitution of the United States.

''(3) REVIEW.—

''(A) LIMITATIONS ON REVIEW.—Review by a judge having jurisdiction under subsection (a)(1) shall be limited to that required to make the findings described in paragraph (1). The judge shall not have jurisdiction to review the means by which an acquisition under this section may be conducted.

''(B) REVIEW OF PROBABLE CAUSE.—If the judge determines that the facts submitted under subsection (b) are insufficient to establish probable cause to issue an order under this subsection, the judge shall enter an order so stating and provide a written statement for the record of the reasons for such determination. The Government may appeal an order under this clause pursuant to subsection (e).

''(C) REVIEW OF MINIMIZATION PROCEDURES.—If the judge determines that the minimization procedures applicable to dissemination of information obtained through an acquisition under this subsection do not meet the definition of minimization procedures under section 101(h) or section 301(4), the judge shall enter an order so stating and provide a written statement for the record of the reasons for such determination. The Government may appeal an order under this clause pursuant to subsection (e).

''(D) SCOPE OF REVIEW OF CERTIFICATION.—If the judge determines that the certification provided under subsection (b)(4) is clearly erroneous on the basis of the information furnished under subsection (b), the judge shall enter an order so stating and provide a written statement for the record of the reasons for such determination. The Government may appeal an order under this subparagraph pursuant to subsection (e).

''(4) DURATION.—An order under this paragraph shall be effective for a period not to exceed 90 days and such order may be renewed for additional 90-day periods upon submission of renewal applications meeting the requirements of subsection (b).

''(5) COMPLIANCE.—At or prior to the end of the period of time for which an order or extension is granted under this section, the judge may assess compliance with the minimization procedures by reviewing the circumstances under which information concerning United States persons was disseminated, provided that the judge may not inquire into the circumstances relating to the conduct of the acquisition.

''(d) EMERGENCY AUTHORIZATION.—

''(1) AUTHORITY FOR EMERGENCY AUTHORIZATION.—Notwithstanding any other provision in this subsection, if the Attorney General reasonably determines that—

''(A) an emergency situation exists with respect to the acquisition of foreign intelligence information for which an order may be obtained under subsection (c) before an order under that

subsection may, with due diligence, be obtained, and

''(B) the factual basis for issuance of an order under this section exists,

the Attorney General may authorize the emergency acquisition if a judge having jurisdiction under subsection (a)(1) is informed by the Attorney General or a designee of the Attorney General at the time of such authorization that the decision has been made to conduct such acquisition and if an application in accordance with this subsection is made to a judge of the Foreign Intelligence Surveillance Court as soon as practicable, but not more than 7 days after the Attorney General authorizes such acquisition.

''(2) MINIMIZATION PROCEDURES.—If the Attorney General authorizes such emergency acquisition, the Attorney General shall require that the minimization procedures required by this section be followed.

''(3) TERMINATION OF EMERGENCY AUTHORIZATION.—In the absence of an order under subsection (c), the acquisition shall terminate when the information sought is obtained, if the application for the order is denied, or after the expiration of 7 days from the time of authorization by the Attorney General, whichever is earliest.

''(4) USE OF INFORMATION.—In the event that such application is denied, or in any other case where the acquisition is terminated and no order is issued approving the acquisition, no information obtained or evidence derived from such acquisition, except under circumstances in which the target of the acquisition is determined not to be a United States person during the pendency of the 7-day emergency acquisition period, shall be received in evidence or otherwise disclosed in any trial, hearing, or other proceeding in or before any court, grand jury, department, office, agency, regulatory body, legislative committee, or other authority of the United States, a State, or political subdivision thereof, and no information concerning any United States person acquired from such acquisition shall subsequently be used or disclosed in any other manner by Federal officers or employees without the consent of such person, except with the approval of the Attorney General if the information indicates a threat of death or serious bodily harm to any person.

''(e) APPEAL.—

''(1) APPEAL TO THE COURT OF REVIEW.—The Government may file an appeal with the Foreign Intelligence Surveillance Court of Review for review of an order issued pursuant to subsection (c). The Court of Review shall have jurisdiction to consider such appeal and shall provide a written statement for the record of the reasons for a decision under this paragraph.

''(2) CERTIORARI TO THE SUPREME COURT.—The Government may file a petition for a writ of certiorari for review of the decision of the Court of Review issued under paragraph (1). The record for such review shall be transmitted under seal to the Supreme Court of the United States, which shall have jurisdiction to review such decision.

''SEC. 706. JOINT APPLICATIONS AND CONCURRENT AUTHORIZATIONS.

''(a) JOINT APPLICATIONS AND ORDERS.—If an acquisition targeting a United States person under section 704 or section 705 is proposed to be conducted both inside and outside the United States, a judge having jurisdiction under section 704(a)(1) or section 705(a)(1) may issue simultaneously, upon the request of the Government in a joint application complying with the requirements of section 704(b) or section 705(b), orders under section 704(c) or section 705(c), as applicable.

''(b) CONCURRENT AUTHORIZATION.—If an order authorizing electronic surveillance or physical search has been obtained under section 105 or section 304 and that order is still in effect, the Attorney General may authorize, without an order under section 704 or section 705, an acquisition of foreign intelligence information targeting that United States person while such person is reasonably believed to be located outside the United States.

''SEC. 707. USE OF INFORMATION ACQUIRED UNDER TITLE VII.

''(a) INFORMATION ACQUIRED UNDER SECTION 703.—Information acquired from an acquisition conducted under section 703 shall be deemed to be information acquired from an electronic surveillance pursuant to title I for purposes of section 106, except for the purposes of subsection (j) of such section.

''(b) INFORMATION ACQUIRED UNDER SECTION 704.—Information acquired from an acquisition conducted under section 704 shall be deemed to be information acquired from an electronic surveillance pursuant to title I for purposes of section 106.

''SEC. 708. CONGRESSIONAL OVERSIGHT.

''(a) SEMIANNUAL REPORT.—Not less frequently than once every 6 months, the Attorney General shall fully inform, in a manner consistent with national security, the congressional intelligence committees, the Committee on the Judiciary of the Senate, and the Committee on the Judiciary of the House of Representatives, concerning the implementation of this title.

''(b) CONTENT.—Each report made under subparagraph (a) shall include—

''(1) with respect to section 703—

''(A) any certifications made under subsection 703(f) during the reporting period;

''(B) any directives issued under subsection 703(g) during the reporting period;

''(C) a description of the judicial review during the reporting period of any such certifications and targeting and minimization procedures utilized with respect to such acquisition, including a copy of any order or pleading in connection with such review that contains a significant legal interpretation of the provisions of this section;

''(D) any actions taken to challenge or enforce a directive under paragraphs (4) or (5) of section 703(g);

''(E) any compliance reviews conducted by the Department of Justice or the Office of the Director of National Intelligence of acquisitions authorized under subsection 703(a);

''(F) a description of any incidents of noncompliance with a directive issued by the Attorney General and the Director of National Intelligence under subsection 703(g), including—

''(i) incidents of noncompliance by an element of the intelligence community with procedures adopted pursuant to subsections (d) and (e) of section 703; and

''(ii) incidents of noncompliance by a specified person to whom the Attorney General and Director of National Intelligence issued a directive under subsection 703(g); and

''(G) any procedures implementing this section;

''(2) with respect to section 704—

''(A) the total number of applications made for orders under section 704(b);

''(B) the total number of such orders either granted, modified, or denied; and

''(C) the total number of emergency acquisitions authorized by the Attorney General under section 704(d) and the total number of subsequent orders approving or denying such acquisitions; and

''(3) with respect to section 705—

''(A) the total number of applications made for orders under 705(b);

''(B) the total number of such orders either granted, modified, or denied; and

''(C) the total number of emergency acquisitions authorized by the Attorney General under subsection 705(d) and the total number of subsequent orders approving or denying such applications.''.

(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—

(1) by striking the item relating to title VII;

(2) by striking the item relating to section 701; and

(3) by adding at the end the following:

''TITLE VII—ADDITIONAL PROCEDURES REGARDING CERTAIN PERSONS OUTSIDE THE UNITED STATES

''Sec. 701. Limitation on definition of electronic surveillance.

''Sec. 702. Definitions.

''Sec. 703. Procedures for targeting certain persons outside the United States other than United States persons.

''Sec. 704. Certain acquisitions inside the United States of United States persons outside the United States.

''Sec. 705. Other acquisitions targeting United States persons outside the United States.

''Sec. 706. Joint applications and concurrent authorizations.

''Sec. 707. Use of information acquired under title VII.

''Sec. 708. Congressional oversight.''.

(c) TECHNICAL AND CONFORMING AMENDMENTS.—

(1) TITLE 18, UNITED STATES CODE.—

(A) SECTION 2232.—Section 2232(e) of title 18, United States Code, is amended by inserting ''(as defined in section 101(f) of the Foreign Intelligence Surveillance Act of 1978, regardless of the limitation of section 701 of that Act)'' after ''electronic surveillance''.

(B) SECTION 2511.—Section 2511(2)(a)(ii)(A) of title 18, United States Code, is amended by inserting ''or a court order pursuant to section 705 of the Foreign Intelligence Surveillance Act of 1978'' after ''assistance''.

(2) FOREIGN INTELLIGENCE SURVEILLANCE ACT OF 1978.—

(A) SECTION 109.—Section 109 of the Foreign Intelligence Surveillance Act of 1978 (50 U.S.C. 1809) is amended by adding at the end the following:

''(e) DEFINITION.—For the purpose of this section, the term 'electronic surveillance' means electronic surveillance as defined in section 101(f) of this Act regardless of the limitation of section 701 of this Act.''.

(B) SECTION 110.—Section 110 of the Foreign Intelligence Surveillance Act of 1978 (50 U.S.C. 1810) is amended by—

(i) adding an ''(a)'' before ''CIVIL ACTION'',

(ii) redesignating subsections (a) through (c) as paragraphs (1) through (3), respectively; and

(iii) adding at the end the following:

''(b) DEFINITION.—For the purpose of this section, the term 'electronic surveillance' means electronic surveillance as defined in section 101(f) of this Act regardless of the limitation of section 701 of this Act.''.

(C) SECTION 601.—Section 601(a)(1) of the Foreign Intelligence Surveillance Act of 1978 (50 U.S.C. 1871(a)(1)) is amended by striking subparagraphs (C) and (D) and inserting the following:

''(C) pen registers under section 402;

''(D) access to records under section 501;

''(E) acquisitions under section 704; and

''(F) acquisitions under section 705;''.

(d) TERMINATION OF AUTHORITY.—

(1) IN GENERAL.—Except as provided in paragraph (2), the amendments made by subsections (a)(2), (b), and (c) shall cease to have effect on December 31, 2013.

(2) CONTINUING APPLICABILITY.—Section 703(g)(3) of the Foreign Intelligence Surveillance Act of 1978 (as amended by subsection (a)) shall remain in effect with respect to any directive issued pursuant to section 703(g) of that Act (as so amended) for information, facilities, or assistance provided during the period such directive was or is in effect. Section 704(e) of the Foreign Intelligence Surveillance Act of 1978 (as amended by subsection (a)) shall remain in effect with respect to an order or request for emergency assistance under that section. The use of information acquired by an acquisition conducted under

section 703 of that Act (as so amended) shall continue to be governed by the provisions of section 707 of that Act (as so amended).

SEC. 102. STATEMENT OF EXCLUSIVE MEANS BY WHICH ELECTRONIC SURVEILLANCE AND INTERCEPTION OF DOMESTIC COMMUNICATIONS MAY BE CONDUCTED.

(a) STATEMENT OF EXCLUSIVE MEANS.—Title I of the Foreign Intelligence Surveillance Act of 1978 (50 U.S.C. 1801 et seq.) is amended by adding at the end the following new section:

''STATEMENT OF EXCLUSIVE MEANS BY WHICH ELECTRONIC SURVEILLANCE AND INTERCEPTION OF DOMESTIC COMMUNICATIONS MAY BE CONDUCTED

''SEC. 112. The procedures of chapters 119, 121, and 206 of title 18, United States Code, and this Act shall be the exclusive means by which electronic surveillance (as defined in section 101(f), regardless of the limitation of section 701) and the interception of domestic wire, oral, or electronic communications may be conducted.''.

(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 adding after the item relating to section 111, the following:

''Sec. 112. Statement of exclusive means by which electronic surveillance and interception of domestic communications may be conducted.''.

(c) CONFORMING AMENDMENTS.—Section 2511(2) of title 18, United States Code, is amended in paragraph (f), by striking '', as defined in section 101 of such Act,'' and inserting ''(as defined in section 101(f) of such Act regardless of the limitation of section 701 of such Act)''.

SEC. 103. SUBMITTAL TO CONGRESS OF CERTAIN COURT ORDERS UNDER THE FOREIGN INTELLIGENCE SURVEILLANCE ACT OF 1978.

(a) INCLUSION OF CERTAIN ORDERS IN SEMI-ANNUAL REPORTS OF ATTORNEY GENERAL.—Subsection (a)(5) of section 601 of the Foreign Intelligence Surveillance Act of 1978 (50 U.S.C. 1871) is amended by striking ''(not including orders)'' and inserting '', orders,''.

(b) REPORTS BY ATTORNEY GENERAL ON CERTAIN OTHER ORDERS.—Such section 601 is further amended by adding at the end the following:

''(c) SUBMISSIONS TO CONGRESS.—The Attorney General shall submit to the committees of Congress referred to in subsection (a)—

''(1) a copy of any decision, order, or opinion issued by the Foreign Intelligence Surveillance Court or the Foreign Intelligence Surveillance Court of Review that includes significant construction or interpretation of any provision of this Act, and any pleadings, applications, or memoranda of law associated with such decision, order, or opinion, not later than 45 days after such decision, order, or opinion is issued; and

''(2) a copy of any such decision, order, or opinion, and any pleadings, applications, or memoranda of law associated with such decision, order, or opinion, that was issued during the 5-year period ending on the date of the enactment of the FISA Amendments Act of 2008 and not previously submitted in a report under subsection (a).

''(d) PROTECTION OF NATIONAL SECURITY.—The Attorney General, in consultation with the Director of National Intelligence, may authorize redactions of materials described in subsection (c) that are provided to the committees of Congress referred to in subsection (a), if such redactions are necessary to protect the national security of the United States and are limited to sensitive sources and methods information or the identities of targets.''.

(c) DEFINITIONS.—Such section 601, as amended by subsections (a) and (b), is further amended by adding at the end the following:

''(e) DEFINITIONS.—In this section:

''(1) FOREIGN INTELLIGENCE SURVEILLANCE COURT; COURT.—The term '' 'Foreign Intelligence Surveillance Court'' means the court established by section 103(a).

''(2) FOREIGN INTELLIGENCE SURVEILLANCE COURT OF REVIEW; COURT OF REVIEW.—The term 'Foreign Intelligence Surveillance Court of Review' means the court established by section 103(b).''.

SEC. 104. APPLICATIONS FOR COURT ORDERS.

Section 104 of the Foreign Intelligence Surveillance Act of 1978 (50 U.S.C. 1804) is amended—

(1) in subsection (a)—

(A) by striking paragraphs (2) and (11);

(B) by redesignating paragraphs (3) through (10) as paragraphs (2) through (9), respectively;

(C) in paragraph (5), as redesignated by subparagraph (B) of this paragraph, by striking ''detailed'';

(D) in paragraph (6), as redesignated by subparagraph (B) of this paragraph, in the matter preceding subparagraph (A)—

(i) by striking ''Affairs or'' and inserting ''Affairs,''; and

(ii) by striking ''Senate—'' and inserting ''Senate, or the Deputy Director of the Federal Bureau of Investigation, if designated by the President as a certifying official—'';

(E) in paragraph (7), as redesignated by subparagraph (B) of this paragraph, by striking ''statement of'' and inserting ''summary statement of'';

(F) in paragraph (8), as redesignated by subparagraph (B) of this paragraph, by adding ''and'' at the end; and

(G) in paragraph (9), as redesignated by subparagraph (B) of this paragraph, by striking ''; and'' and inserting a period;

(2) by striking subsection (b);

(3) by redesignating subsections (c) through (e) as subsections (b) through (d), respectively; and

(4) in paragraph (1)(A) of subsection (d), as redesignated by paragraph (3) of this subsection, by striking ''or the Director of National Intelligence'' and inserting ''the Director of National Intelligence, or the Director of the Central Intelligence Agency''.

SEC. 105. ISSUANCE OF AN ORDER.

Section 105 of the Foreign Intelligence Surveillance Act of 1978 (50 U.S.C. 1805) is amended—

(1) in subsection (a)—

(A) by striking paragraph (1); and

(B) by redesignating paragraphs (2) through (5) as paragraphs (1) through (4), respectively;

(2) in subsection (b), by striking ''(a)(3)'' and inserting ''(a)(2)'';

(3) in subsection (c)(1)—

(A) in subparagraph (D), by adding ''and'' at the end;

(B) in subparagraph (E), by striking ''; and'' and inserting a period; and

(C) by striking subparagraph (F);

(4) by striking subsection (d);

(5) by redesignating subsections (e) through (i) as subsections (d) through (h), respectively;

(6) by amending subsection (e), as redesignated by paragraph (5) of this section, to read as follows:

''(e)(1) Notwithstanding any other provision of this title, the Attorney General may authorize the emergency employment of electronic surveillance if the Attorney General—

''(A) reasonably determines that an emergency situation exists with respect to the employment of electronic surveillance to obtain foreign intelligence information before an order authorizing such surveillance can with due diligence be obtained;

''(B) reasonably determines that the factual basis for issuance of an order under this title to approve such electronic surveillance exists;

''(C) informs, either personally or through a designee, a judge having jurisdiction under section 103 at the time of such authorization that the decision has been made to employ emergency electronic surveillance; and

''(D) makes an application in accordance with this title to a judge having jurisdiction under section 103 as soon as practicable, but not later than 7 days after the Attorney General authorizes such surveillance.

''(2) If the Attorney General authorizes the emergency employment of electronic surveillance under paragraph (1), the Attorney General shall require that the minimization procedures required by this title for the issuance of a judicial order be followed.

''(3) In the absence of a judicial order approving such electronic surveillance, the surveillance shall terminate when the information sought is obtained, when the application for the order is denied, or after the expiration of 7 days from the time of authorization by the Attorney General, whichever is earliest.

''(4) A denial of the application made under this subsection may be reviewed as provided in section 103.

''(5) In the event that such application for approval is denied, or in any other case where the electronic surveillance is terminated and no order is issued approving the surveillance, no information obtained or evidence derived from such surveillance shall be received in evidence or otherwise disclosed in any trial, hearing, or other proceeding in or before any court, grand jury, department, office, agency, regulatory body, legislative committee, or other authority of the United States, a State, or political subdivision thereof, and no information concerning any United States person acquired from such surveillance shall subsequently be used or disclosed in any other manner by Federal officers or employees without the consent of such person, except with the approval of the Attorney General if the information indicates a threat of death or serious bodily harm to any person.

''(6) The Attorney General shall assess compliance with the requirements of paragraph (5).''; and

(7) by adding at the end the following:

''(i) In any case in which the Government makes an application to a judge under this title to conduct electronic surveillance involving communications and the judge grants such application, upon the request of the applicant, the judge shall also authorize the installation and use of pen registers and trap and trace devices, and direct the disclosure of the information set forth in section 402(d)(2).''.

SEC. 106. USE OF INFORMATION.

Subsection (i) of section 106 of the Foreign Intelligence Surveillance Act of 1978 (8 U.S.C. 1806) is amended by striking ''radio communication'' and inserting ''communication''.

SEC. 107. AMENDMENTS FOR PHYSICAL SEARCHES.

(a) APPLICATIONS.—Section 303 of the Foreign Intelligence Surveillance Act of 1978 (50 U.S.C. 1823) is amended—

(1) in subsection (a)—

(A) by striking paragraph (2);

(B) by redesignating paragraphs (3) through (9) as paragraphs (2) through (8), respectively;

(C) in paragraph (2), as redesignated by subparagraph (B) of this paragraph, by striking ''detailed'';

(D) in paragraph (3)(C), as redesignated by subparagraph (B) of this paragraph, by inserting ''or is about to be'' before ''owned''; and

(E) in paragraph (6), as redesignated by subparagraph (B) of this paragraph, in the matter preceding subparagraph (A)—

(i) by striking ''Affairs or'' and inserting ''Affairs,''; and

(ii) by striking ''Senate—'' and inserting ''Senate, or the Deputy Director of the Federal Bureau of Investigation, if designated by the President as a certifying official—''; and

(2) in subsection (d)(1)(A), by striking ''or the Director of National Intelligence'' and inserting ''the Director of National Intelligence, or the Director of the Central Intelligence Agency''.

(b) ORDERS.—Section 304 of the Foreign Intelligence Surveillance Act of 1978 (50 U.S.C. 1824) is amended—

(1) in subsection (a)—

(A) by striking paragraph (1); and

(B) by redesignating paragraphs (2) through (5) as paragraphs (1) through (4), respectively; and

(2) by amending subsection (e) to read as follows:

''(e)(1) Notwithstanding any other provision of this title, the Attorney General may authorize the emergency employment of a physical search if the Attorney General reasonably—

''(A) determines that an emergency situation exists with respect to the employment of a physical search to obtain foreign intelligence information before an order authorizing such physical search can with due diligence be obtained;

''(B) determines that the factual basis for issuance of an order under this title to approve such physical search exists;

''(C) informs, either personally or through a designee, a judge of the Foreign Intelligence Surveillance Court at the time of such authorization that the decision has been made to employ an emergency physical search; and

''(D) makes an application in accordance with this title to a judge of the Foreign Intelligence Surveillance Court as soon as practicable, but not more than 7 days after the Attorney General authorizes such physical search.

''(2) If the Attorney General authorizes the emergency employment of a physical search under paragraph (1), the Attorney General shall require that the minimization procedures required by this title for the issuance of a judicial order be followed.

''(3) In the absence of a judicial order approving such physical search, the physical search shall terminate when the information sought is obtained, when the application for the order is denied, or after the expiration of 7 days from the time of authorization by the Attorney General, whichever is earliest.

''(4) A denial of the application made under this subsection may be reviewed as provided in section 103.

''(5)(A) In the event that such application for approval is denied, or in any other case where the physical search is terminated and no order is issued approving the physical search, no information obtained or evidence derived from such physical search shall be received in evidence or otherwise disclosed in any trial, hearing, or other proceeding in or before any court, grand jury, department, office, agency, regulatory body, legislative committee, or other authority of the United States, a State, or political subdivision thereof, and no information concerning any United States person acquired from such physical search shall subsequently be used or disclosed in any other manner by Federal officers or employees without the consent of such person, except with the approval of the Attorney General if the information indicates a threat of death or serious bodily harm to any person.

''(B) The Attorney General shall assess compliance with the requirements of subparagraph (A).''.

(c) CONFORMING AMENDMENTS.—The Foreign Intelligence Surveillance Act of 1978 (50 U.S.C. 1801 et seq.) is amended—

(1) in section 304(a)(4), as redesignated by subsection (b) of this section, by striking ''303(a)(7)(E)'' and inserting ''303(a)(6)(E)''; and

(2) in section 305(k)(2), by striking ''303(a)(7)'' and inserting ''303(a)(6)''.

SEC. 108. AMENDMENTS FOR EMERGENCY PEN REGISTERS AND TRAP AND TRACE DEVICES.

Section 403 of the Foreign Intelligence Surveillance Act of 1978 (50 U.S.C. 1843) is amended—

(1) in subsection (a)(2), by striking ''48 hours'' and inserting ''7 days''; and

(2) in subsection (c)(1)(C), by striking ''48 hours'' and inserting ''7 days''.

SEC. 109. FOREIGN INTELLIGENCE SURVEILLANCE COURT.

(a) DESIGNATION OF JUDGES.—Subsection (a) of section 103 of the Foreign Intelligence Surveillance Act of 1978 (50 U.S.C. 1803) is amended by inserting ''at least'' before ''seven of the United States judicial circuits''.

(b) EN BANC AUTHORITY.—

(1) IN GENERAL.—Subsection (a) of section 103 of the Foreign Intelligence Surveillance Act of 1978, as amended by subsection (a) of this section, is further amended—

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

(B) by adding at the end the following new paragraph:

''(2)(A) The court established under this subsection may, on its own initiative, or upon the request of the Government in any proceeding or a party under section 501(f) or paragraph (4) or (5) of section 703(h), hold a hearing or rehearing, en banc, when ordered by a majority of the judges that constitute such court upon a determination that—

''(i) en banc consideration is necessary to secure or maintain uniformity of the court's decisions; or

''(ii) the proceeding involves a question of exceptional importance.

''(B) Any authority granted by this Act to a judge of the court established under this subsection may be exercised by the court en banc. When exercising such authority, the court en banc shall comply with any requirements of this Act on the exercise of such authority.

''(C) For purposes of this paragraph, the court en banc shall consist of all judges who constitute the court established under this subsection.''.

(2) CONFORMING AMENDMENTS.—The Foreign Intelligence Surveillance Act of 1978 is further amended—

(A) in subsection (a) of section 103, as amended by this subsection, by inserting ''(except when sitting en banc under paragraph (2))'' after ''no judge designated under this subsection''; and

(B) in section 302(c) (50 U.S.C. 1822(c)), by inserting ''(except when sitting en banc)'' after ''except that no judge''.

(c) STAY OR MODIFICATION DURING AN APPEAL.—Section 103 of the Foreign Intelligence Surveillance Act of 1978 (50 U.S.C. 1803) is amended—

(1) by redesignating subsection (f) as subsection (g); and

(2) by inserting after subsection (e) the following new subsection:

''(f)(1) A judge of the court established under subsection (a), the court established under subsection (b) or a judge of that court, or the Supreme Court of the United States or a justice of that court, may, in accordance with the rules of their respective courts, enter a stay of an order or an order modifying an order of the court established under subsection (a) or the court established under subsection (b) entered under any title of this Act, while the court established under subsection (a) conducts a rehearing, while an appeal is pending to the court established under subsection (b), or while a petition of certiorari is pending in the Supreme Court of the United States, or during the pendency of any review by that court.

''(2) The authority described in paragraph (1) shall apply to an order entered under any provision of this Act.''.

(d) AUTHORITY OF FOREIGN INTELLIGENCE SURVEILLANCE COURT.—Section 103 of the Foreign Intelligence Surveillance Act of 1978 (50 U.S.C. 1803), as amended by this Act, is amended by adding at the end the following:

''(h)(1) Nothing in this Act shall be considered to reduce or contravene the inherent authority of the Foreign Intelligence Surveillance Court to determine, or enforce, compliance with an order or a rule of such Court or with a procedure approved by such Court.

''(2) In this subsection, the terms 'Foreign Intelligence Surveillance Court' and 'Court' mean the court established by subsection (a).''.

SEC. 110. WEAPONS OF MASS DESTRUCTION.

(a) DEFINITIONS.—

(1) FOREIGN POWER.—Subsection (a)(4) of section 101 of the Foreign Intelligence Surveillance Act of 1978 (50 U.S.C. 1801(a)(4)) is amended by inserting '', the international proliferation of weapons of mass destruction,'' after ''international terrorism''.

(2) AGENT OF A FOREIGN POWER.—Subsection (b)(1) of such section 101 is amended—

(A) in subparagraph (B), by striking ''or'' at the end

(B) in subparagraph (C), by striking ''or'' at the end; and

(C) by adding at the end the following new subparagraphs:

''(D) engages in the international proliferation of weapons of mass destruction, or activities in preparation therefor; or

''(E) engages in the international proliferation of weapons of mass destruction, or activities in preparation therefor, for or on behalf of a foreign power; or''.

(3) FOREIGN INTELLIGENCE INFORMATION.—Subsection (e)(1)(B) of such section 101 is amended by striking ''sabotage or international terrorism'' and inserting ''sabotage, international terrorism, or the international proliferation of weapons of mass destruction''.

(4) WEAPON OF MASS DESTRUCTION.—Such section 101 is amended by inserting after subsection (o) the following:

''(p) 'Weapon of mass destruction' means—

''(1) any destructive device described in section 921(a)(4)(A) of title 18, United States Code, that is intended or has the capability to cause death or serious bodily injury to a significant number of people;

''(2) any weapon that is designed or intended to cause death or serious bodily injury through the release, dissemination, or impact of toxic or poisonous chemicals or their precursors;

''(3) any weapon involving a biological agent, toxin, or vector (as such terms are defined in section 178 of title 18, United States Code); or

''(4) any weapon that is designed to release radiation or radioactivity at a level dangerous to human life.''.

(b) USE OF INFORMATION.—

(1) IN GENERAL.—Section 106(k)(1)(B) of the Foreign Intelligence Surveillance Act of 1978 (50 U.S.C. 1806(k)(1)(B)) is amended by striking ''sabotage or international terrorism'' and inserting ''sabotage, international terrorism, or the international proliferation of weapons of mass destruction''.

(2) PHYSICAL SEARCHES.—Section 305(k)(1)(B) of such Act (50 U.S.C. 1825(k)(1)(B)) is amended by striking ''sabotage or international terrorism'' and inserting ''sabotage, international terrorism, or the international proliferation of weapons of mass destruction''.

(c) TECHNICAL AND CONFORMING AMENDMENT.—Section 301(1) of the Foreign Intelligence Surveillance Act of 1978 (50 U.S.C. 1821(1)) is amended by inserting '''weapon of mass destruction','' after '''person',''.

SEC. 111. TECHNICAL AND CONFORMING AMENDMENTS.

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

(1) in paragraph (1), by striking ''105B(h) or 501(f)(1)'' and inserting ''501(f)(1) or 703''; and

(2) in paragraph (2), by striking ''105B(h) or 501(f)(1)'' and inserting ''501(f)(1) or 703''.

TITLE II—PROTECTIONS FOR ELECTRONIC COMMUNICATION SERVICE PROVIDERS

SEC. 201. DEFINITIONS.

In this title:

(1) ASSISTANCE.—The term ''assistance'' means the provision of, or the provision of access to, information (including communication contents, communications records, or other information relating to a customer or communication), facilities, or another form of assistance.

(2) CONTENTS.—The term ''contents'' has the meaning given that term in section 101(n) of the

Foreign Intelligence Surveillance Act of 1978 (50 U.S.C. 1801(n)).

(3) COVERED CIVIL ACTION.—The term ''covered civil action'' means a civil action filed in a Federal or State court that—

(A) alleges that an electronic communication service provider furnished assistance to an element of the intelligence community; and

(B) seeks monetary or other relief from the electronic communication service provider related to the provision of such assistance.

(4) ELECTRONIC COMMUNICATION SERVICE PROVIDER.—The term ''electronic communication service provider'' means—

(A) a telecommunications carrier, as that term is defined in section 3 of the Communications Act of 1934 (47 U.S.C. 153);

(B) a provider of an electronic communication service, as that term is defined in section 2510 of title 18, United States Code;

(C) a provider of a remote computing service, as that term is defined in section 2711 of title 18, United States Code;

(D) any other communication service provider who has access to wire or electronic communications either as such communications are transmitted or as such communications are stored;

(E) a parent, subsidiary, affiliate, successor, or assignee of an entity described in subparagraph (A), (B), (C), or (D); or

(F) an officer, employee, or agent of an entity described in subparagraph (A), (B), (C), (D), or (E).

(5) ELEMENT OF THE INTELLIGENCE COMMUNITY.—The term ''element of the intelligence community'' means an element of the intelligence community specified in or designated under section 3(4) of the National Security Act of 1947 (50 U.S.C. 401a(4)).

SEC. 202. LIMITATIONS ON CIVIL ACTIONS FOR ELECTRONIC COMMUNICATION SERVICE PROVIDERS.

(a) LIMITATIONS.—

(1) IN GENERAL.—Notwithstanding any other provision of law, a covered civil action shall not lie or be maintained in a Federal or State court, and shall be promptly dismissed, if the Attorney General certifies to the court that—

(A) the assistance alleged to have been provided by the electronic communication service provider was—

(i) in connection with an intelligence activity involving communications that was—

(I) authorized by the President during the period beginning on September 11, 2001, and ending on January 17, 2007; and

(II) designed to detect or prevent a terrorist attack, or activities in preparation for a terrorist attack, against the United States; and

(ii) described in a written request or directive from the Attorney General or the head of an element of the intelligence community (or the deputy of such person) to the electronic communication service provider indicating that the activity was—

(I) authorized by the President; and

(II) determined to be lawful; or

(B) the electronic communication service provider did not provide the alleged assistance.

(2) REVIEW.—A certification made pursuant to paragraph (1) shall be subject to review by a court for abuse of discretion.

(b) REVIEW OF CERTIFICATIONS.—If the Attorney General files a declaration under section 1746 of title 28, United States Code, that disclosure of a certification made pursuant to subsection (a) would harm the national security of the United States, the court shall—

(1) review such certification in camera and ex parte; and

(2) limit any public disclosure concerning such certification, including any public order following such an ex parte review, to a statement that the conditions of subsection (a) have been met, without disclosing the subparagraph of subsection (a)(1) that is the basis for the certification.

(c) NONDELEGATION.—The authority and duties of the Attorney General under this section shall be performed by the Attorney General (or Acting Attorney General) or a designee in a position not lower than the Deputy Attorney General.

(d) CIVIL ACTIONS IN STATE COURT.—A covered civil action that is brought in a State court shall be deemed to arise under the Constitution and laws of the United States and shall be removable under section 1441 of title 28, United States Code.

(e) RULE OF CONSTRUCTION.—Nothing in this section may be construed to limit any otherwise available immunity, privilege, or defense under any other provision of law.

(f) EFFECTIVE DATE AND APPLICATION.—This section shall apply to any covered civil action that is pending on or filed after the date of enactment of this Act.

SEC. 203. PROCEDURES FOR IMPLEMENTING STATUTORY DEFENSES UNDER THE FOREIGN INTELLIGENCE SURVEILLANCE ACT OF 1978.

The Foreign Intelligence Surveillance Act of 1978 (50 U.S.C. 1801 et seq.), as amended by section 101, is further amended by adding after title VII the following new title:

''TITLE VIII—PROTECTION OF PERSONS ASSISTING THE GOVERNMENT

''SEC. 801. DEFINITIONS.

''In this title:

''(1) ASSISTANCE.—The term 'assistance' means the provision of, or the provision of access to, information (including communication contents, communications records, or other information relating to a customer or communication), facilities, or another form of assistance.

''(2) ATTORNEY GENERAL.—The term 'Attorney General' has the meaning give that term in section 101(g).

''(3) CONTENTS.—The term 'contents' has the meaning given that term in section 101(n).

''(4) ELECTRONIC COMMUNICATION SERVICE PROVIDER.—The term 'electronic communication service provider' means—

''(A) a telecommunications carrier, as that term is defined in section 3 of the Communications Act of 1934 (47 U.S.C. 153);

''(B) a provider of electronic communication service, as that term is defined in section 2510 of title 18, United States Code;

''(C) a provider of a remote computing service, as that term is defined in section 2711 of title 18, United States Code;

''(D) any other communication service provider who has access to wire or electronic communications either as such communications are transmitted or as such communications are stored;

''(E) a parent, subsidiary, affiliate, successor, or assignee of an entity described in subparagraph (A), (B), (C), or (D); or

''(F) an officer, employee, or agent of an entity described in subparagraph (A), (B), (C), (D), or (E).

''(5) ELEMENT OF THE INTELLIGENCE COMMUNITY.—The term 'element of the intelligence community' means an element of the intelligence community as specified or designated under section 3(4) of the National Security Act of 1947 (50 U.S.C. 401a(4)).

''(6) PERSON.—The term 'person' means—

''(A) an electronic communication service provider; or

''(B) a landlord, custodian, or other person who may be authorized or required to furnish assistance pursuant to—

''(i) an order of the court established under section 103(a) directing such assistance;

''(ii) a certification in writing under section 2511(2)(a)(ii)(B) or 2709(b) of title 18, United States Code; or

''(iii) a directive under section 102(a)(4), 105B(e), as in effect on the day before the date of the enactment of the FISA Amendments Act of 2008 or 703(h).

''(7) STATE.—The term 'State' means any State, political subdivision of a State, the Commonwealth of Puerto Rico, the District of Columbia, and any territory or possession of the United States, and includes any officer, public utility commission, or other body authorized to regulate an electronic communication service provider.

''SEC. 802. PROCEDURES FOR IMPLEMENTING STATUTORY DEFENSES.

''(a) REQUIREMENT FOR CERTIFICATION.—

''(1) IN GENERAL.—Notwithstanding any other provision of law, no civil action may lie or be maintained in a Federal or State court against any person for providing assistance to an element of the intelligence community, and shall be promptly dismissed, if the Attorney General certifies to the court that—

''(A) any assistance by that person was provided pursuant to an order of the court established under section 103(a) directing such assistance;

''(B) any assistance by that person was provided pursuant to a certification in writing under section 2511(2)(a)(ii)(B) or 2709(b) of title 18, United States Code;

''(C) any assistance by that person was provided pursuant to a directive under sections 102(a)(4), 105B(e), as in effect on the day before the date of the enactment of the FISA Amendments Act of 2008, or 703(h) directing such assistance; or

''(D) the person did not provide the alleged assistance.

''(2) REVIEW.—A certification made pursuant to paragraph (1) shall be subject to review by a court for abuse of discretion.

''(b) LIMITATIONS ON DISCLOSURE.—If the Attorney General files a declaration under section 1746 of title 28, United States Code, that disclosure of a certification made pursuant to subsection (a) would harm the national security of the United States, the court shall—

''(1) review such certification in camera and ex parte; and

''(2) limit any public disclosure concerning such certification, including any public order following such an ex parte review, to a statement that the conditions of subsection (a) have been met, without disclosing the subparagraph of subsection (a)(1) that is the basis for the certification.

''(c) REMOVAL.—A civil action against a person for providing assistance to an element of the intelligence community that is brought in a State court shall be deemed to arise under the Constitution and laws of the United States and shall be removable under section 1441 of title 28, United States Code.

''(d) RELATIONSHIP TO OTHER LAWS.—Nothing in this section may be construed to limit any otherwise available immunity, privilege, or defense under any other provision of law.

''(e) APPLICABILITY.—This section shall apply to a civil action pending on or filed after the date of enactment of the FISA Amendments Act of 2008.''.

SEC. 204. PREEMPTION OF STATE INVESTIGATIONS.

Title VIII of the Foreign Intelligence Surveillance Act (50 U.S.C. 1801 et seq.), as added by section 203 of this Act, is amended by adding at the end the following new section:

''SEC. 803. PREEMPTION.

''(a) IN GENERAL.—No State shall have authority to—

''(1) conduct an investigation into an electronic communication service provider's alleged assistance to an element of the intelligence community;

''(2) require through regulation or any other means the disclosure of information about an electronic communication service provider's alleged assistance to an element of the intelligence community;

''(3) impose any administrative sanction on an electronic communication service provider for assistance to an element of the intelligence community; or

''(4) commence or maintain a civil action or other proceeding to enforce a requirement that an electronic communication service provider disclose information concerning alleged assistance to an element of the intelligence community.

''(b) SUITS BY THE UNITED STATES.—The United States may bring suit to enforce the provisions of this section.

''(c) JURISDICTION.—The district courts of the United States shall have jurisdiction over any civil action brought by the United States to enforce the provisions of this section.

''(d) APPLICATION.—This section shall apply to any investigation, action, or proceeding that is pending on or filed after the date of enactment of the FISA Amendments Act of 2008.''.

SEC. 205. TECHNICAL AMENDMENTS.

The table of contents in the first section of the Foreign Intelligence Surveillance Act of 1978 (50 U.S.C. 1801 et seq.), as amended by section 101(b), is further amended by adding at the end the following:

''TITLE VIII—PROTECTION OF PERSONS ASSISTING THE GOVERNMENT

''Sec. 801. Definitions.
''Sec. 802. Procedures for implementing statutory defenses.
''Sec. 803. Preemption.''.

TITLE III—OTHER PROVISIONS

SEC. 301. SEVERABILITY.

If any provision of this Act, any amendment made by this Act, or the application thereof to any person or circumstances is held invalid, the validity of the remainder of the Act, any such amendments, and of the application of such provisions to other persons and circumstances shall not be affected thereby.

SEC. 302. EFFECTIVE DATE; REPEAL; TRANSITION PROCEDURES.

(a) IN GENERAL.—Except as provided in subsection (c), the amendments made by this Act shall take effect on the date of the enactment of this Act.

(b) REPEAL.—

(1) IN GENERAL.—Except as provided in subsection (c), sections 105A, 105B, and 105C of the Foreign Intelligence Surveillance Act of 1978 (50 U.S.C. 1805a, 1805b, and 1805c) are repealed.

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

(c) TRANSITIONS PROCEDURES.—

(1) PROTECTION FROM LIABILITY.—Notwithstanding subsection (b)(1), subsection (l) of section 105B of the Foreign Intelligence Surveillance Act of 1978 shall remain in effect with respect to any directives issued pursuant to such section 105B for information, facilities, or assistance provided during the period such directive was or is in effect.

(2) ORDERS IN EFFECT.—

(A) ORDERS IN EFFECT ON DATE OF ENACTMENT.—Notwithstanding any other provision of this Act or of the Foreign Intelligence Surveillance Act of 1978—

(i) any order in effect on the date of enactment of this Act issued pursuant to the Foreign Intelligence Surveillance Act of 1978 or section 6(b) of the Protect America Act of 2007 (Public Law 110–55; 121 Stat. 556) shall remain in effect until the date of expiration of such order; and

(ii) 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 reauthorize such order if the facts and circumstances continue to justify issuance of such order under the provisions of such Act, as in effect on the day before the date of the enactment of the Protect America Act of 2007, except as amended by sections 102, 103, 104, 105, 106, 107, 108, 109, and 110 of this Act.

(B) ORDERS IN EFFECT ON DECEMBER 31, 2013.—Any order issued under title VII of the Foreign Intelligence Surveillance Act of 1978, as amended by section 101 of this Act, in effect on December 31, 2013, shall continue in effect until the date of the expiration of such order. Any such order shall be governed by the applicable provisions of the Foreign Intelligence Surveillance Act of 1978, as so amended.

(3) AUTHORIZATIONS AND DIRECTIVES IN EFFECT.—

(A) AUTHORIZATIONS AND DIRECTIVES IN EFFECT ON DATE OF ENACTMENT.—Notwithstanding any other provision of this Act or of the Foreign Intelligence Surveillance Act of 1978, any authorization or directive in effect on the date of the enactment of this Act issued pursuant to the Protect America Act of 2007, or any amendment made by that Act, shall remain in effect until the date of expiration of such authorization or directive. Any such authorization or directive shall be governed by the applicable provisions of the Protect America Act of 2007 (121 Stat. 552), and the amendment made by that Act, and, except as provided in paragraph (4) of this subsection, any acquisition pursuant to such authorization or directive shall be deemed not 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)), as construed in accordance with section 105A of the Foreign Intelligence Surveillance Act of 1978 (50 U.S.C. 1805a)).

(B) AUTHORIZATIONS AND DIRECTIVES IN EFFECT ON DECEMBER 31, 2013.—Any authorization or directive issued under title VII of the Foreign Intelligence Surveillance Act of 1978, as amended by section 101 of this Act, in effect on December 31, 2013, shall continue in effect until the date of the expiration of such authorization or directive. Any such authorization or directive shall be governed by the applicable provisions of the Foreign Intelligence Surveillance Act of 1978, as so amended, and, except as provided in section 707 of the Foreign Intelligence Surveillance Act of 1978, as so amended, any acquisition pursuant to such authorization or directive shall be deemed not to constitute electronic surveillance (as that term is defined in section 101(f) of the Foreign Intelligence Surveillance Act of 1978, to the extent that such section 101(f) is limited by section 701 of the Foreign Intelligence Surveillance Act of 1978, as so amended).

(4) USE OF INFORMATION ACQUIRED UNDER PROTECT AMERICA ACT.—Information acquired from an acquisition conducted under the Protect America Act of 2007, and the amendments made by that Act, shall be deemed to be information acquired from an electronic surveillance pursuant to title I of the Foreign Intelligence Surveillance Act of 1978 (50 U.S.C. 1801 et seq.) for purposes of section 106 of that Act (50 U.S.C. 1806), except for purposes of subsection (j) of such section.

(5) NEW ORDERS.—Notwithstanding any other provision of this Act or of the Foreign Intelligence Surveillance Act of 1978—

(A) the government may file an application for an order under the Foreign Intelligence Surveillance Act of 1978, as in effect on the day before the date of the enactment of the Protect America Act of 2007, except as amended by sections 102, 103, 104, 105, 106, 107, 108, 109, and 110 of this Act; and

(B) the court established under section 103(a) of the Foreign Intelligence Surveillance Act of 1978 shall enter an order granting such an application if the application meets the requirements of such Act, as in effect on the day before the date of the enactment of the Protect America Act of 2007, except as amended by sections 102, 103, 104, 105, 106, 107, 108, 109, and 110 of this Act.

(6) EXTANT AUTHORIZATIONS.—At the request of the applicant, the court established under section 103(a) of the Foreign Intelligence Surveillance Act of 1978 shall extinguish any extant authorization to conduct electronic surveillance or physical search entered pursuant to such Act.

(7) APPLICABLE PROVISIONS.—Any surveillance conducted pursuant to an order entered pursuant to this subsection shall be subject to the provisions of the Foreign Intelligence Surveillance Act of 1978, as in effect on the day before the date of the enactment of the Protect America Act of 2007, except as amended by sections 102, 103, 104, 105, 106, 107, 108, 109, and 110 of this Act.

(8) TRANSITION PROCEDURES CONCERNING THE TARGETING OF UNITED STATES PERSONS OVERSEAS.—Any authorization in effect on the date of enactment of this Act under section 2.5 of Executive Order 12333 to intentionally target a United States person reasonably believed to be located outside the United States shall remain in effect, and shall constitute a sufficient basis for conducting such an acquisition targeting a United States person located outside the United States until the earlier of—

(A) the date that authorization expires; or

(B) the date that is 90 days after the date of the enactment of this Act.

MOTION OFFERED BY MR. CONYERS

Mr. CONYERS. Mr. Speaker, pursuant to House Resolution 1041, I have a motion at the desk.

The SPEAKER pro tempore. The Clerk will designate the motion.

The text of the motion is as follows:

Motion offered by Mr. CONYERS:

Mr. CONYERS moves that the House concur in the Senate amendment to H.R. 3773 with the amendment printed in House Report 110–549.

The text of the House amendment to the Senate amendment is as follows:

In lieu of the matter proposed to be inserted by the Senate, insert the following:

SEC. 1. SHORT TITLE; TABLE OF CONTENTS.

(a) SHORT TITLE.—This Act may be cited as the ''Foreign Intelligence Surveillance Act of 1978 Amendments Act of 2008'' or the ''FISA Amendments Act of 2008''.

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

TITLE I—FOREIGN INTELLIGENCE SURVEILLANCE

SEC. 101. ADDITIONAL PROCEDURES REGARDING CERTAIN PERSONS OUTSIDE THE UNITED STATES.

(a) IN GENERAL.—The Foreign Intelligence Surveillance Act of 1978 (50 U.S.C. 1801 et seq.) is amended—

(1) by striking title VII; and

(2) by adding after title VI the following new title:

"TITLE VII—ADDITIONAL PROCEDURES REGARDING CERTAIN PERSONS OUTSIDE THE UNITED STATES

"SEC. 701. DEFINITIONS.

''(a) IN GENERAL.—The terms 'agent of a foreign power', 'Attorney General', 'contents', 'electronic surveillance', 'foreign intelligence information', 'foreign power', 'minimization procedures', 'person', 'United States', and 'United States person' have the meanings given such terms in section 101, except as specifically provided in this title.

''(b) ADDITIONAL DEFINITIONS.—

''(1) CONGRESSIONAL INTELLIGENCE COMMITTEES.—The term 'congressional intelligence committees' means—

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

''(B) the Permanent Select Committee on Intelligence of the House of Representatives.

''(2) FOREIGN INTELLIGENCE SURVEILLANCE COURT; COURT.—The terms 'Foreign Intelligence Surveillance Court' and 'Court' mean the court established by section 103(a).

''(3) FOREIGN INTELLIGENCE SURVEILLANCE COURT OF REVIEW; COURT OF REVIEW.—The terms 'Foreign Intelligence Surveillance Court of Review' and 'Court of Review' mean the court established by section 103(b).

''(4) ELECTRONIC COMMUNICATION SERVICE PROVIDER.—The term 'electronic communication service provider' means—

''(A) a telecommunications carrier, as that term is defined in section 3 of the Communications Act of 1934 (47 U.S.C. 153);

''(B) a provider of electronic communication service, as that term is defined in section 2510 of title 18, United States Code;

''(C) a provider of a remote computing service, as that term is defined in section 2711 of title 18, United States Code;

''(D) any other communication service provider who has access to wire or electronic communications either as such communications are transmitted or as such communications are stored; or

''(E) an officer, employee, or agent of an entity described in subparagraph (A), (B), (C), or (D).

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

"SEC. 702. PROCEDURES FOR TARGETING CERTAIN PERSONS OUTSIDE THE UNITED STATES OTHER THAN UNITED STATES PERSONS.

''(a) AUTHORIZATION.—Notwithstanding any other provision of law, pursuant to an order issued in accordance with subsection (i)(3) or a determination under subsection (g)(1)(B), the Attorney General and the Director of National Intelligence may authorize jointly, for a period of up to 1 year from the effective date of the authorization, the targeting of persons reasonably believed to be located outside the United States to acquire foreign intelligence information.

''(b) LIMITATIONS.—An acquisition authorized under subsection (a)—

''(1) may not intentionally target any person known at the time of acquisition to be located in the United States;

''(2) may not intentionally target a person reasonably believed to be located outside the United States in order to target a particular, known person reasonably believed to be in the United States;

''(3) may not intentionally target a United States person reasonably believed to be located outside the United States;

''(4) may not intentionally acquire any communication as to which the sender and all intended recipients are known at the time of the acquisition to be located in the United States; and

''(5) shall be conducted in a manner consistent with the fourth amendment to the Constitution of the United States.

''(c) CONDUCT OF ACQUISITION.—An acquisition authorized under subsection (a) may be conducted only in accordance with—

''(1) a certification made by the Attorney General and the Director of National Intelligence pursuant to subsection (g) or a determination under paragraph (1)(B) of such subsection; and

''(2) the procedures and guidelines required pursuant to subsections (d), (e), and (f).

''(d) TARGETING PROCEDURES.—

''(1) REQUIREMENT TO ADOPT.—The Attorney General, in consultation with the Director of National Intelligence, shall adopt targeting procedures that are reasonably designed to ensure that any acquisition authorized under subsection (a) is limited to targeting persons reasonably believed to be located outside the United States and does not result in the intentional acquisition of any communication as to which the sender and all intended recipients are known at the time of the acquisition to be located in the United States.

''(2) JUDICIAL REVIEW.—The procedures required by paragraph (1) shall be subject to judicial review pursuant to subsection (i).

''(e) MINIMIZATION PROCEDURES.—

''(1) REQUIREMENT TO ADOPT.—The Attorney General, in consultation with the Director of National Intelligence, shall adopt minimization procedures for acquisitions authorized under subsection (a) that—

''(A) in the case of electronic surveillance, meet the definition of minimization procedures under section 101(h); and

''(B) in the case of a physical search, meet the definition of minimization procedures under section 301(4).

''(2) JUDICIAL REVIEW.—The minimization procedures required by paragraph (1) shall be subject to judicial review pursuant to subsection (i).

''(f) GUIDELINES FOR COMPLIANCE WITH LIMITATIONS.—

''(1) REQUIREMENT TO ADOPT.—The Attorney General, in consultation with the Director of National Intelligence, shall adopt guidelines to ensure—

''(A) compliance with the limitations in subsection (b); and

''(B) that an application is filed under section 104 or 303, if required by this Act.

''(2) CRITERIA.—With respect to subsection (b)(2), the guidelines adopted pursuant to paragraph (1) shall contain specific criteria for determining whether a significant purpose of an acquisition is to acquire the communications of a specific United States person reasonably believed to be located in the United States. Such criteria shall include consideration of whether—

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

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

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

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

''(3) TRAINING.—The Director of National Intelligence shall establish a training program for appropriate personnel of the intelligence community to ensure that the guidelines adopted pursuant to paragraph (1) are properly implemented.

''(4) SUBMISSION TO CONGRESS AND FOREIGN INTELLIGENCE SURVEILLANCE COURT.—The Attorney General shall submit the guidelines adopted pursuant to paragraph (1) to—

''(A) the congressional intelligence committees;

''(B) the Committees on the Judiciary of the House of Representatives and the Senate; and

''(C) the Foreign Intelligence Surveillance Court.

''(g) CERTIFICATION.—

''(1) IN GENERAL.—

''(A) REQUIREMENT.—Subject to subparagraph (B), if the Attorney General and the Director of National Intelligence seek to authorize an acquisition under this section, the Attorney General and the Director of National Intelligence shall provide, under oath, a written certification, as described in this subsection.

''(B) EMERGENCY AUTHORIZATION.—If the Attorney General and the Director of National Intelligence determine that an emergency situation exists, immediate action by the Government is required, and time does not permit the completion of judicial review pursuant to subsection (i) prior to the initiation of an acquisition, the Attorney General and the Director of National Intelligence may authorize the acquisition and shall submit to the Foreign Intelligence Surveillance Court a certification under this subsection as soon as possible but in no event more than 7 days after such determination is made.

''(2) REQUIREMENTS.—A certification made under this subsection shall—

''(A) attest that—

''(i) there are reasonable procedures in place for determining that the acquisition authorized under subsection (a)—

''(I) is targeted at persons reasonably believed to be located outside the United States and such procedures have been submitted to the Foreign Intelligence Surveillance Court; and

''(II) does not result in the intentional acquisition of any communication as to which the sender and all intended recipients are known at the time of the acquisition to be located in the United States, and such procedures have been submitted to the Foreign Intelligence Surveillance Court;

''(ii) guidelines have been adopted in accordance with subsection (f) to ensure compliance with the limitations in subsection (b) and to ensure that applications are filed under section 104 or section 303, if required by this Act;

''(iii) the minimization procedures to be used with respect to such acquisition—

''(I) meet the definition of minimization procedures under section 101(h) or section 301(4) in accordance with subsection (e); and

''(II) have been submitted to the Foreign Intelligence Surveillance Court;

''(iv) the procedures and guidelines referred to in clauses (i), (ii), and (iii) are consistent with the requirements of the fourth amendment to the Constitution of the United States;

''(v) a significant purpose of the acquisition is to obtain foreign intelligence information;

''(vi) the acquisition involves obtaining the foreign intelligence information from or with the assistance of an electronic communication service provider; and

''(vii) the acquisition complies with the limitations in subsection (b);

''(B) be supported, as appropriate, by the affidavit of any appropriate official in the area of national security who is—

''(i) appointed by the President, by and with the consent of the Senate; or

''(ii) the head of an element of the intelligence community; and

''(C) include—

''(i) an effective date for the authorization that is between 30 and 60 days from the submission of the written certification to the court; or

''(ii) if the acquisition has begun or will begin in less than 30 days from the submission of the written certification to the court—

''(I) the date the acquisition began or the effective date for the acquisition;

''(II) a description of why implementation was required in less than 30 days from the submission of the written certification to the court; and

''(III) if the acquisition is authorized under paragraph (1)(B), the basis for the determination that an emergency situation exists, immediate action by the government is required, and time does not permit the completion of judicial review prior to the initiation of the acquisition.

''(3) LIMITATION.—A certification made under this subsection is not required to identify the specific facilities, places, premises, or property at which the acquisition authorized under subsection (a) will be directed or conducted.

''(4) SUBMISSION TO THE COURT.—The Attorney General shall transmit a copy of a certification made under this subsection, and any supporting affidavit, under seal to the Foreign Intelligence Surveillance Court before the initiation of an acquisition under this section, except in accordance with paragraph (1)(B). The Attorney General shall maintain such certification under security measures adopted by the Chief Justice of the United States and the Attorney General, in consultation with the Director of National Intelligence.

''(5) REVIEW.—A certification submitted pursuant to this subsection shall be subject to judicial review pursuant to subsection (i).

''(h) DIRECTIVES AND JUDICIAL REVIEW OF DIRECTIVES.—

''(1) AUTHORITY.—Pursuant to an order issued in accordance with subsection (i)(3) or a determination under subsection (g)(1)(B), the Attorney General and the Director of National Intelligence may direct, in writing, an electronic communication service provider to—

''(A) immediately provide the Government with all information, facilities, or assistance necessary to accomplish the acquisition authorized in accordance with this section in a manner that will protect the secrecy of the acquisition and produce a minimum of interference with the services that such electronic communication service provider is providing to the target of the acquisition; and

''(B) maintain under security procedures approved by the Attorney General and the Director of National Intelligence any records concerning the acquisition or the aid furnished that such electronic communication service provider wishes to maintain.

''(2) COMPENSATION.—The Government shall compensate, at the prevailing rate, an electronic communication service provider for providing information, facilities, or assistance pursuant to paragraph (1).

''(3) RELEASE FROM LIABILITY.—Notwithstanding any other provision of law, no cause of action shall lie in any court against any electronic communication service provider for providing any information, facilities, or assistance in accordance with a directive issued pursuant to paragraph (1).

''(4) CHALLENGING OF DIRECTIVES.—

''(A) AUTHORITY TO CHALLENGE.—An electronic communication service provider receiving a directive issued pursuant to paragraph (1) may challenge the directive by filing a petition with the Foreign Intelligence Surveillance Court, which shall have jurisdiction to review such a petition.

''(B) ASSIGNMENT.—The presiding judge of the Court shall assign the petition filed under subparagraph (A) to 1 of the judges serving in the pool established by section 103(e)(1) not later than 24 hours after the filing of the petition.

''(C) STANDARDS FOR REVIEW.—A judge considering a petition to modify or set aside a directive may grant such petition only if the judge finds that the directive does not meet the requirements of this section or is otherwise unlawful.

''(D) PROCEDURES FOR INITIAL REVIEW.—A judge shall conduct an initial review of a petition filed under subparagraph (A) not later than 5 days after being assigned such petition. If the judge determines that the petition does not consist of claims, defenses, or other legal contentions that are warranted by existing law, a nonfrivolous argument for extending, modifying, or reversing existing law, or establishing new law, the judge shall immediately deny the petition and affirm the directive or any part of the directive that is the subject of the petition and order the recipient to comply with the directive or any part of it. Upon making such a determination or promptly thereafter, the judge shall provide a written statement for the record of the reasons for a determination under this subparagraph.

''(E) PROCEDURES FOR PLENARY REVIEW.—If a judge determines that a petition filed under subparagraph (A) requires plenary review, the judge shall affirm, modify, or set aside the directive that is the subject of that petition not later than 30 days after being assigned the petition. If the judge does not set aside the directive, the judge shall immediately affirm or modify the directive and order the recipient to comply with the directive in its entirety or as modified. The judge shall provide a written statement for the records of the reasons for a determination under this subparagraph.

''(F) CONTINUED EFFECT.—Any directive not explicitly modified or set aside under this paragraph shall remain in full effect.

''(G) CONTEMPT OF COURT.—Failure to obey an order of the Court issued under this paragraph may be punished by the Court as contempt of court.

''(5) ENFORCEMENT OF DIRECTIVES.—

''(A) ORDER TO COMPEL.—If an electronic communication service provider fails to comply with a directive issued pursuant to paragraph (1), the Attorney General may file a petition for an order to compel the electronic communication service provider to comply with the directive with the Foreign Intelligence Surveillance Court, which shall have jurisdiction to review such a petition.

''(B) ASSIGNMENT.—The presiding judge of the Court shall assign a petition filed under subparagraph (A) to 1 of the judges serving in the pool established by section 103(e)(1) not later than 24 hours after the filing of the petition.

''(C) PROCEDURES FOR REVIEW.—A judge considering a petition filed under subparagraph (A) shall issue an order requiring the electronic communication service provider to comply with the directive or any part of it, as issued or as modified not later than 30 days after being assigned the petition if the judge finds that the directive meets the requirements of this section and is otherwise lawful. The judge shall provide a written statement for the record of the reasons for a determination under this paragraph.

''(D) CONTEMPT OF COURT.—Failure to obey an order of the Court issued under this paragraph may be punished by the Court as contempt of court.

''(E) PROCESS.—Any process under this paragraph may be served in any judicial district in which the electronic communication service provider may be found.

''(6) APPEAL.—

''(A) APPEAL TO THE COURT OF REVIEW.—The Government or an electronic communication service provider receiving a directive issued pursuant to paragraph (1) may file a petition with the Foreign Intelligence Surveillance Court of Review for review of a decision issued pursuant to paragraph (4) or (5). The Court of Review shall have jurisdiction to consider such a petition and shall provide a written statement for the record of the reasons for a decision under this paragraph.

''(B) CERTIORARI TO THE SUPREME COURT.—The Government or an electronic communication service provider receiving a directive issued pursuant to paragraph (1) may file a petition for a writ of certiorari for review of the decision of the Court of Review issued under subparagraph (A). The record for such review shall be transmitted under seal to the Supreme Court of the United States, which shall have jurisdiction to review such decision.

''(i) JUDICIAL REVIEW OF CERTIFICATIONS AND PROCEDURES.—

''(1) IN GENERAL.—

''(A) REVIEW BY THE FOREIGN INTELLIGENCE SURVEILLANCE COURT.—The Foreign Intelligence Surveillance Court shall have jurisdiction to review any certification submitted pursuant to subsection (g) and the targeting and minimization procedures required by subsections (d) and (e).

''(B) TIME PERIOD FOR REVIEW.—The Court shall review the certification submitted pursuant to subsection (g) and the targeting and minimization procedures required by subsections (d) and (e) and approve or deny an order under this subsection not later than 30 days after the date on which a certification is submitted.

''(2) REVIEW.—The Court shall review the following:

''(A) CERTIFICATIONS.—A certification submitted pursuant to subsection (g) to determine whether the certification contains all the required elements.

''(B) TARGETING PROCEDURES.—The targeting procedures required by subsection (d) to assess whether the procedures are reasonably designed to ensure that the acquisition authorized under subsection (a) is limited to the targeting of persons reasonably believed to be located outside the United States and does not result in the intentional acquisition of any communication as to which the sender and all intended recipients are known at the time of the acquisition to be located in the United States.

''(C) MINIMIZATION PROCEDURES.—The minimization procedures required by subsection (e) to assess whether such procedures meet the definition of minimization procedures

under section 101(h) or section 301(4) in accordance with subsection (e).

''(3) ORDERS.—

''(A) APPROVAL.—If the Court finds that a certification submitted pursuant to subsection (g) contains all of the required elements and that the procedures required by subsections (d) and (e) are consistent with the requirements of those subsections and with the fourth amendment to the Constitution of the United States, the Court shall enter an order approving the certification and the use of the procedures for the acquisition.

''(B) CORRECTION OF DEFICIENCIES.—If the Court finds that a certification submitted pursuant to subsection (g) does not contain all of the required elements or that the procedures required by subsections (d) and (e) are not consistent with the requirements of those subsections or the fourth amendment to the Constitution of the United States—

''(i) in the case of a certification submitted in accordance with subsection (g)(1)(A), the Court shall deny the order, identify any deficiency in the certification or procedures, and provide the Government with an opportunity to correct such deficiency; and

''(ii) in the case of a certification submitted in accordance with subsection (g)(1)(B), the Court shall issue an order directing the Government to, at the Government's election and to the extent required by the Court's order—

''(I) correct any deficiency identified by the Court not later than 30 days after the date the Court issues the order; or

''(II) cease the acquisition authorized under subsection (g)(1)(B).

''(C) REQUIREMENT FOR WRITTEN STATEMENT.—In support of its orders under this subsection, the Court shall provide, simultaneously with the orders, for the record a written statement of its reasons.

''(4) APPEAL.—

''(A) APPEAL TO THE COURT OF REVIEW.—The Government may appeal any order under this section to the Foreign Intelligence Surveillance Court of Review, which shall have jurisdiction to review such order. For any decision affirming, reversing, or modifying an order of the Foreign Intelligence Surveillance Court, the Court of Review shall provide for the record a written statement of its reasons.

''(B) CONTINUATION OF ACQUISITION PENDING REHEARING OR APPEAL.—Any acquisition affected by an order under paragraph (3)(B)(ii) may continue—

''(i) during the pendency of any rehearing of the order by the Court en banc; and

''(ii) if the Government appeals an order under this section, subject to subparagraph (C), until the Court of Review enters an order under subparagraph (A).

''(C) IMPLEMENTATION OF EMERGENCY AUTHORITY PENDING APPEAL.—Not later than 60 days after the filing of an appeal of an order issued under paragraph (3)(B)(ii) directing the correction of a deficiency, the Court of Review shall determine, and enter a corresponding order regarding whether all or any part of the correction order, as issued or modified, shall be implemented during the pendency of the appeal. The Government shall conduct an acquisition affected by such order issued under paragraph (3)(B)(ii) in accordance with an order issued under this subparagraph or shall cease such acquisition.

''(D) CERTIORARI TO THE SUPREME COURT.—The Government may file a petition for a writ of certiorari for review of a decision of the Court of Review issued under subparagraph (A). The record for such review shall be transmitted under seal to the Supreme Court of the United States, which shall have jurisdiction to review such decision.

''(5) SCHEDULE.—

''(A) REPLACEMENT OF AUTHORIZATIONS IN EFFECT.—If the Attorney General and the Director of National Intelligence seek to replace an authorization issued pursuant to section 105B of the Foreign Intelligence Surveillance Act of 1978, as added by section 2 of the Protect America Act of 2007 (Public Law 110-55), the Attorney General and the Director of National Intelligence shall, to the extent practicable, submit to the Court a certification under subsection (g) and the procedures required by subsections (d), (e), and (f) at least 30 days before the expiration of such authorization.

''(B) REAUTHORIZATION OF AUTHORIZATIONS IN EFFECT.—If the Attorney General and the Director of National Intelligence seek to replace an authorization issued pursuant to this section, the Attorney General and the Director of National Intelligence shall, to the extent practicable, submit to the Court a certification under subsection (g) and the procedures required by subsections (d), (e), and (f) at least 30 days prior to the expiration of such authorization.

''(C) CONSOLIDATED SUBMISSIONS.—The Attorney General and Director of National Intelligence shall, to the extent practicable, annually submit to the Court a consolidation of—

''(i) certifications under subsection (g) for reauthorization of authorizations in effect;

''(ii) the procedures required by subsections (d), (e), and (f); and

''(iii) the annual review required by subsection (l)(3) for the preceding year.

''(D) TIMING OF REVIEWS.—The Attorney General and the Director of National Intelligence shall, to the extent practicable, schedule the completion of the annual review under subsection (l)(3) and a semiannual assessment under subsection (l)(1) so that they may be submitted to the Court at the time of the consolidated submission under subparagraph (C).

''(E) CONSTRUCTION.—The requirements of subparagraph (C) shall not be construed to preclude the Attorney General and the Director of National Intelligence from submitting certifications for additional authorizations at other times during the year as necessary.

''(6) COMPLIANCE.—At or before the end of the period of time for which a certification submitted pursuant to subsection (g) and procedures required by subsection (d) and (e) are approved by an order under this section, the Foreign Intelligence Surveillance Court may assess compliance with the minimization procedures required by subsection (e) by reviewing the circumstances under which information concerning United States persons was acquired, retained, or disseminated.

''(j) JUDICIAL PROCEEDINGS.—

''(1) EXPEDITED PROCEEDINGS.—Judicial proceedings under this section shall be conducted as expeditiously as possible.

''(2) TIME LIMITS.—A time limit for a judicial decision in this section shall apply unless the Court, the Court of Review, or any judge of either the Court or the Court of Review, by order for reasons stated, extends that time for good cause.

''(k) MAINTENANCE AND SECURITY OF RECORDS AND PROCEEDINGS.—

''(1) STANDARDS.—The Foreign Intelligence Surveillance Court shall maintain a record of a proceeding under this section, including petitions filed, orders granted, and statements of reasons for decision, under security measures adopted by the Chief Justice of the United States, in consultation with the Attorney General and the Director of National Intelligence.

''(2) FILING AND REVIEW.—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.

''(3) RETENTION OF RECORDS.—The Director of National Intelligence and the Attorney General shall retain a directive made or an order granted under this section for a period of not less than 10 years from the date on which such directive or such order is made.

''(l) ASSESSMENTS AND REVIEWS.—

''(1) SEMIANNUAL ASSESSMENT.—Not less frequently than once every 6 months, the Attorney General and Director of National Intelligence shall assess compliance with the procedures and guidelines required by subsections (d), (e), and (f) and shall submit each assessment to—

''(A) the congressional intelligence committees;

''(B) the Committees on the Judiciary of the House of Representatives and the Senate; and

''(C) the Foreign Intelligence Surveillance Court.

''(2) AGENCY ASSESSMENT.—The Inspectors General of the Department of Justice and of each element of the intelligence community authorized to acquire foreign intelligence information under subsection (a), with respect to such Department or such element—

''(A) are authorized to review compliance with the procedures and guidelines required by subsections (d), (e), and (f);

''(B) with respect to acquisitions authorized under subsection (a), shall review the disseminated intelligence reports containing a reference to a United States person identity and the number of United States person identities subsequently disseminated by the element concerned in response to requests for identities that were not referred to by name or title in the original reporting;

''(C) with respect to acquisitions authorized under subsection (a), shall review the targets that were later determined to be located in the United States and, to the extent possible, whether their communications were reviewed; and

''(D) shall provide each such review to—

''(i) the Attorney General;

''(ii) the Director of National Intelligence;

''(iii) the congressional intelligence committees;

''(iv) the Committees on the Judiciary of the House of Representatives and the Senate; and

''(v) the Foreign Intelligence Surveillance Court.

''(3) ANNUAL REVIEW.—

''(A) REQUIREMENT TO CONDUCT.—The head of each element of the intelligence community conducting an acquisition authorized under subsection (a) shall conduct an annual review to determine whether there is reason to believe that foreign intelligence information has been or will be obtained from the acquisition. The annual review shall provide, with respect to such acquisitions authorized under subsection (a)—

''(i) the number and nature of disseminated intelligence reports containing a reference to a United States person identity;

''(ii) the number and nature of United States person identities subsequently disseminated by that element in response to requests for identities that were not referred to by name or title in the original reporting;

''(iii) the number of targets that were later determined to be located in the United States and, to the extent possible, whether their communications were reviewed; and

''(iv) a description of any procedures developed by the head of such element of the intelligence community and approved by the Director of National Intelligence to assess,

in a manner consistent with national security, operational requirements and the privacy interests of United States persons, the extent to which the acquisitions authorized under subsection (a) acquire the communications of United States persons, and the results of any such assessment.

''(B) USE OF REVIEW.—The head of each element of the intelligence community that conducts an annual review under subparagraph (A) shall use each such review to evaluate the adequacy of the minimization procedures utilized by such element or the application of the minimization procedures to a particular acquisition authorized under subsection (a).

''(C) PROVISION OF REVIEW.—The head of each element of the intelligence community that conducts an annual review under subparagraph (A) shall provide such review to—

''(i) the Foreign Intelligence Surveillance Court;

''(ii) the Attorney General;

''(iii) the Director of National Intelligence;

''(iv) the congressional intelligence committees; and

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

''(m) CONSTRUCTION.—Nothing in this Act shall be construed to require an application under section 104 for an acquisition that is targeted in accordance with this section at a person reasonably believed to be located outside the United States.

''SEC. 703. CERTAIN ACQUISITIONS INSIDE THE UNITED STATES OF UNITED STATES PERSONS OUTSIDE THE UNITED STATES.

''(a) JURISDICTION OF THE FOREIGN INTELLIGENCE SURVEILLANCE COURT.—

''(1) IN GENERAL.—The Foreign Intelligence Surveillance Court shall have jurisdiction to review an application and enter an order approving the targeting of a United States person reasonably believed to be located outside the United States to acquire foreign intelligence information if the acquisition constitutes electronic surveillance or the acquisition of stored electronic communications or stored electronic data that requires an order under this Act and such acquisition is conducted within the United States.

''(2) LIMITATION.—If a United States person targeted under this subsection is reasonably believed to be located in the United States during the pendency of an order issued pursuant to subsection (c), such acquisition shall cease unless authority, other than under this section, is obtained pursuant to this Act or the targeted United States person is again reasonably believed to be located outside the United States during the pendency of an order issued pursuant to subsection (c).

''(b) APPLICATION.—

''(1) IN GENERAL.—Each application for an order under this section shall be made by a Federal officer in writing upon oath or affirmation to a judge having jurisdiction under subsection (a)(1). Each application shall require the approval of the Attorney General based upon the Attorney General's finding that it satisfies the criteria and requirements of such application, as set forth in this section, and shall include—

''(A) the identity of the Federal officer making the application;

''(B) the identity, if known, or a description of the United States person who is the target of the acquisition;

''(C) a statement of the facts and circumstances relied upon to justify the applicant's belief that the United States person who is the target of the acquisition is—

''(i) a person reasonably believed to be located outside the United States; and

''(ii) a foreign power, an agent of a foreign power, or an officer or employee of a foreign power;

''(D) a statement of proposed minimization procedures that—

''(i) in the case of electronic surveillance, meet the definition of minimization procedures in section 101(h); and

''(ii) in the case of a physical search, meet the definition of minimization procedures in section 301(4);

''(E) a description of the nature of the information sought and the type of communications or activities to be subjected to acquisition;

''(F) a certification made by the Attorney General or an official specified in section 104(a)(6) that—

''(i) the certifying official deems the information sought to be foreign intelligence information;

''(ii) a significant purpose of the acquisition is to obtain foreign intelligence information;

''(iii) such information cannot reasonably be obtained by normal investigative techniques;

''(iv) identifies the type of foreign intelligence information being sought according to the categories described in each subparagraph of section 101(e); and

''(v) includes a statement of the basis for the certification that—

''(I) the information sought is the type of foreign intelligence information designated; and

''(II) such information cannot reasonably be obtained by normal investigative techniques;

''(G) a summary statement of the means by which the acquisition will be conducted and whether physical entry is required to effect the acquisition;

''(H) the identity of any electronic communication service provider necessary to effect the acquisition, provided, however, that the application is not required to identify the specific facilities, places, premises, or property at which the acquisition authorized under this section will be directed or conducted;

''(I) a statement of the facts concerning any previous applications that have been made to any judge of the Foreign Intelligence Surveillance Court involving the United States person specified in the application and the action taken on each previous application; and

''(J) a statement of the period of time for which the acquisition is required to be maintained, provided that such period of time shall not exceed 90 days per application.

''(2) OTHER REQUIREMENTS OF THE ATTORNEY GENERAL.—The Attorney General may require any other affidavit or certification from any other officer in connection with the application.

''(3) OTHER REQUIREMENTS OF THE JUDGE.—The judge may require the applicant to furnish such other information as may be necessary to make the findings required by subsection (c)(1).

''(c) ORDER.—

''(1) FINDINGS.—Upon an application made pursuant to subsection (b), the Foreign Intelligence Surveillance Court shall enter an ex parte order as requested or as modified by the Court approving the acquisition if the Court finds that—

''(A) the application has been made by a Federal officer and approved by the Attorney General;

''(B) on the basis of the facts submitted by the applicant, for the United States person who is the target of the acquisition, there is probable cause to believe that the target is—

''(i) a person reasonably believed to be located outside the United States; and

''(ii) a foreign power, an agent of a foreign power, or an officer or employee of a foreign power;

''(C) the proposed minimization procedures—

''(i) in the case of electronic surveillance, meet the definition of minimization procedures in section 101(h); and

''(ii) in the case of a physical search, meet the definition of minimization procedures in section 301(4);

''(D) the application that has been filed contains all statements and certifications required by subsection (b) and the certification or certifications are not clearly erroneous on the basis of the statement made under subsection (b)(1)(F)(v) and any other information furnished under subsection (b)(3).

''(2) PROBABLE CAUSE.—In determining whether or not probable cause exists for purposes of paragraph (1)(B), a judge having jurisdiction under subsection (a)(1) may consider past activities of the target and facts and circumstances relating to current or future activities of the target. No United States person may be considered a foreign power, agent of a foreign power, or officer or employee of a foreign power solely upon the basis of activities protected by the first amendment to the Constitution of the United States.

''(3) REVIEW.—

''(A) LIMITATION ON REVIEW.—Review by a judge having jurisdiction under subsection (a)(1) shall be limited to that required to make the findings described in paragraph (1).

''(B) REVIEW OF PROBABLE CAUSE.—If the judge determines that the facts submitted under subsection (b) are insufficient to establish probable cause under paragraph (1)(B), the judge shall enter an order so stating and provide a written statement for the record of the reasons for such determination. The Government may appeal an order under this subparagraph pursuant to subsection (f).

''(C) REVIEW OF MINIMIZATION PROCEDURES.—If the judge determines that the proposed minimization procedures referred to in paragraph (1)(C) do not meet the definition of minimization procedures as required under such paragraph the judge shall enter an order so stating and provide a written statement for the record of the reasons for such determination. The Government may appeal an order under this subparagraph pursuant to subsection (f).

''(D) REVIEW OF CERTIFICATION.—If the judge determines that an application under subsection (b) does not contain all of the required elements, or that the certification or certifications are clearly erroneous on the basis of the statement made under subsection (b)(1)(F)(v) and any other information furnished under subsection (b)(3), the judge shall enter an order so stating and provide a written statement for the record of the reasons for such determination. The Government may appeal an order under this subparagraph pursuant to subsection (f).

''(4) SPECIFICATIONS.—An order approving an acquisition under this subsection shall specify—

''(A) the identity, if known, or a description of the United States person who is the target of the acquisition identified or described in the application pursuant to subsection (b)(1)(B);

''(B) if provided in the application pursuant to subsection (b)(1)(H), the nature and location of each of the facilities or places at which the acquisition will be directed;

''(C) the nature of the information sought to be acquired and the type of communications or activities to be subjected to acquisition;

''(D) the means by which the acquisition will be conducted and whether physical

entry is required to effect the acquisition; and

''(E) the period of time during which the acquisition is approved.

''(5) DIRECTIONS.—An order approving an acquisition under this subsection shall direct—

''(A) that the minimization procedures referred to in paragraph (1)(C), as approved or modified by the Court, be followed;

''(B) an electronic communication service provider to provide to the Government forthwith all information, facilities, or assistance necessary to accomplish the acquisition authorized under such order in a manner that will protect the secrecy of the acquisition and produce a minimum of interference with the services that such electronic communication service provider is providing to the target of the acquisition;

''(C) an electronic communication service provider to maintain under security procedures approved by the Attorney General any records concerning the acquisition or the aid furnished that such electronic communication service provider wishes to maintain; and

''(D) that the Government compensate, at the prevailing rate, such electronic communication service provider for providing such information, facilities, or assistance.

''(6) DURATION.—An order approved under this subsection shall be effective for a period not to exceed 90 days and such order may be renewed for additional 90-day periods upon submission of renewal applications meeting the requirements of subsection (b).

''(7) COMPLIANCE.—At or prior to the end of the period of time for which an acquisition is approved by an order or extension under this section, the judge may assess compliance with the minimization procedures referred to in paragraph (1)(C) by reviewing the circumstances under which information concerning United States persons was acquired, retained, or disseminated.

''(d) EMERGENCY AUTHORIZATION.—

''(1) AUTHORITY FOR EMERGENCY AUTHORIZATION.—Notwithstanding any other provision of this Act, if the Attorney General reasonably determines that—

''(A) an emergency situation exists with respect to the acquisition of foreign intelligence information for which an order may be obtained under subsection (c) before an order authorizing such acquisition can with due diligence be obtained, and

''(B) the factual basis for issuance of an order under this subsection to approve such acquisition exists,

the Attorney General may authorize such acquisition if a judge having jurisdiction under subsection (a)(1) is informed by the Attorney General, or a designee of the Attorney General, at the time of such authorization that the decision has been made to conduct such acquisition and if an application in accordance with this section is made to a judge of the Foreign Intelligence Surveillance Court as soon as practicable, but not more than 7 days after the Attorney General authorizes such acquisition.

''(2) MINIMIZATION PROCEDURES.—If the Attorney General authorizes an acquisition under paragraph (1), the Attorney General shall require that the minimization procedures referred to in subsection (c)(1)(C) for the issuance of a judicial order be followed.

''(3) TERMINATION OF EMERGENCY AUTHORIZATION.—In the absence of a judicial order approving an acquisition authorized under paragraph (1), such acquisition shall terminate when the information sought is obtained, when the application for the order is denied, or after the expiration of 7 days from the time of authorization by the Attorney General, whichever is earliest.

''(4) USE OF INFORMATION.—If an application for approval submitted pursuant to paragraph (1) is denied, or in any other case where the acquisition is terminated and no order is issued approving the acquisition, no information obtained or evidence derived from such acquisition, except under circumstances in which the target of the acquisition is determined not to be a United States person, shall be received in evidence or otherwise disclosed in any trial, hearing, or other proceeding in or before any court, grand jury, department, office, agency, regulatory body, legislative committee, or other authority of the United States, a State, or political subdivision thereof, and no information concerning any United States person acquired from such acquisition shall subsequently be used or disclosed in any other manner by Federal officers or employees without the consent of such person, except with the approval of the Attorney General if the information indicates a threat of death or serious bodily harm to any person.

''(e) RELEASE FROM LIABILITY.—Notwithstanding any other provision of law, no cause of action shall lie in any court against any electronic communication service provider for providing any information, facilities, or assistance in accordance with an order or request for emergency assistance issued pursuant to subsections (c) or (d).

''(f) APPEAL.—

''(1) APPEAL TO THE FOREIGN INTELLIGENCE SURVEILLANCE COURT OF REVIEW.—The Government may file an appeal with the Foreign Intelligence Surveillance Court of Review for review of an order issued pursuant to subsection (c). The Court of Review shall have jurisdiction to consider such appeal and shall provide a written statement for the record of the reasons for a decision under this paragraph.

''(2) CERTIORARI TO THE SUPREME COURT.—The Government may file a petition for a writ of certiorari for review of a decision of the Court of Review under paragraph (1). The record for such review shall be transmitted under seal to the Supreme Court of the United States, which shall have jurisdiction to review such decision.

''(g) CONSTRUCTION.—Nothing in this Act shall be construed to require an application under section 104 for an acquisition that is targeted in accordance with this section at a person reasonably believed to be located outside the United States.

''SEC. 704. OTHER ACQUISITIONS TARGETING UNITED STATES PERSONS OUTSIDE THE UNITED STATES.

''(a) JURISDICTION AND SCOPE.—

''(1) JURISDICTION.—The Foreign Intelligence Surveillance Court shall have jurisdiction to enter an order pursuant to subsection (c).

''(2) SCOPE.—No department or agency of the Federal Government may intentionally target, for the purpose of acquiring foreign intelligence information, a United States person reasonably believed to be located outside the United States under circumstances in which the targeted United States person has a reasonable expectation of privacy and a warrant would be required if the acquisition were conducted inside the United States for law enforcement purposes, unless a judge of the Foreign Intelligence Surveillance Court has entered an order with respect to such targeted United States person or the Attorney General has authorized an emergency acquisition pursuant to subsection (c) or (d) or any other provision of this Act.

''(3) LIMITATIONS.—

''(A) MOVING OR MISIDENTIFIED TARGETS.—If a targeted United States person is reasonably believed to be in the United States during the pendency of an order issued pursuant to subsection (c), acquisitions relating to such targeted United States Person shall cease unless authority is obtained pursuant to this Act or the targeted United States person is again reasonably believed to be located outside the United States during the pendency of such order.

''(B) APPLICABILITY.—If an acquisition is to be conducted inside the United States and could be authorized under section 703, the acquisition may only be conducted if authorized under section 703 or in accordance with another provision of this Act other than this section.

''(b) APPLICATION.—Each application for an order under this section shall be made by a Federal officer in writing upon oath or affirmation to a judge having jurisdiction under subsection (a)(1). Each application shall require the approval of the Attorney General based upon the Attorney General's finding that it satisfies the criteria and requirements of such application as set forth in this section and shall include—

''(1) the identity of the Federal officer making the application;

''(2) the identity, if known, or a description of the specific United States person who is the target of the acquisition;

''(3) a statement of the facts and circumstances relied upon to justify the applicant's belief that the United States person who is the target of the acquisition is—

''(A) a person reasonably believed to be located outside the United States; and

''(B) a foreign power, an agent of a foreign power, or an officer or employee of a foreign power;

''(4) a statement of proposed minimization procedures that—

''(A) in the case of electronic surveillance, meet the definition of minimization procedures in section 101(h); and

''(B) in the case of a physical search, meet the definition of minimization procedures in section 301(4);

''(5) a certification made by the Attorney General, an official specified in section 104(a)(6), or the head of an element of the intelligence community that—

''(A) the certifying official deems the information sought to be foreign intelligence information; and

''(B) a significant purpose of the acquisition is to obtain foreign intelligence information;

''(6) a statement of the facts concerning any previous applications that have been made to any judge of the Foreign Intelligence Surveillance Court involving the United States person specified in the application and the action taken on each previous application; and

''(7) a statement of the period of time for which the acquisition is required to be maintained, provided that such period of time shall not exceed 90 days per application.

''(c) ORDER.—

''(1) FINDINGS.—Upon an application made pursuant to subsection (b), the Foreign Intelligence Surveillance Court shall enter an ex parte order as requested or as modified by the Court if the Court finds that—

''(A) the application has been made by a Federal officer and approved by the Attorney General;

''(B) on the basis of the facts submitted by the applicant, for the United States person who is the target of the acquisition, there is probable cause to believe that the target is—

''(i) a person reasonably believed to be located outside the United States; and

''(ii) a foreign power, an agent of a foreign power, or an officer or employee of a foreign power;

''(C) the proposed minimization procedures—

''(i) in the case of electronic surveillance, meet the definition of minimization procedures in section 101(h); and

''(ii) in the case of a physical search, meet the definition of minimization procedures in section 301(4);

''(D) the application that has been filed contains all statements and certifications required by subsection (b) and the certification provided under subsection (b)(5) is not clearly erroneous on the basis of the information furnished under subsection (b).

''(2) PROBABLE CAUSE.—In determining whether or not probable cause exists for purposes of an order under paragraph (1)(B), a judge having jurisdiction under subsection (a)(1) may consider past activities of the target and facts and circumstances relating to current or future activities of the target. No United States person may be considered a foreign power, agent of a foreign power, or officer or employee of a foreign power solely upon the basis of activities protected by the first amendment to the Constitution of the United States.

''(3) REVIEW.—

''(A) LIMITATIONS ON REVIEW.—Review by a judge having jurisdiction under subsection (a)(1) shall be limited to that required to make the findings described in paragraph (1). The judge shall not have jurisdiction to review the means by which an acquisition under this section may be conducted.

''(B) REVIEW OF PROBABLE CAUSE.—If the judge determines that the facts submitted under subsection (b) are insufficient to establish probable cause under paragraph (1)(B), the judge shall enter an order so stating and provide a written statement for the record of the reasons for such determination. The Government may appeal an order under this clause pursuant to subsection (e).

''(C) REVIEW OF MINIMIZATION PROCEDURES.—If the judge determines that the proposed minimization procedures referred to in paragraph (1)(C) do not meet the definition of minimization procedures as required under such paragraph, the judge shall enter an order so stating and provide a written statement for the record of the reasons for such determination. The Government may appeal an order under this clause pursuant to subsection (e).

''(D) SCOPE OF REVIEW OF CERTIFICATION.—If the judge determines that an application under subsection (b) does not contain all the required elements, or that the certification provided under subsection (b)(5) is clearly erroneous on the basis of the information furnished under subsection (b), the judge shall enter an order so stating and provide a written statement for the record of the reasons for such determination. The Government may appeal an order under this clause pursuant to subsection (e).

''(4) DURATION.—An order under this paragraph shall be effective for a period not to exceed 90 days and such order may be renewed for additional 90-day periods upon submission of renewal applications meeting the requirements of subsection (b).

''(5) COMPLIANCE.—At or prior to the end of the period of time for which an order or extension is granted under this section, the judge may assess compliance with the minimization procedures referred to in paragraph (1)(C) by reviewing the circumstances under which information concerning United States persons was disseminated, provided that the judge may not inquire into the circumstances relating to the conduct of the acquisition.

''(d) EMERGENCY AUTHORIZATION.—

''(1) AUTHORITY FOR EMERGENCY AUTHORIZATION.—Notwithstanding any other provision of this section, if the Attorney General reasonably determines that—

''(A) an emergency situation exists with respect to the acquisition of foreign intelligence information for which an order may be obtained under subsection (c) before an order under that subsection may, with due diligence, be obtained, and

''(B) the factual basis for the issuance of an order under this section exists,

the Attorney General may authorize such acquisition if a judge having jurisdiction under subsection (a)(1) is informed by the Attorney General or a designee of the Attorney General at the time of such authorization that the decision has been made to conduct such acquisition and if an application in accordance with this section is made to a judge of the Foreign Intelligence Surveillance Court as soon as practicable, but not more than 7 days after the Attorney General authorizes such acquisition.

''(2) MINIMIZATION PROCEDURES.—If the Attorney General authorizes an emergency acquisition under paragraph (1), the Attorney General shall require that the minimization procedures referred to in subsection (c)(1)(C) be followed.

''(3) TERMINATION OF EMERGENCY AUTHORIZATION.—In the absence of an order under subsection (c), the acquisition authorized under paragraph (1) shall terminate when the information sought is obtained, if the application for the order is denied, or after the expiration of 7 days from the time of authorization by the Attorney General, whichever is earliest.

''(4) USE OF INFORMATION.—If an application submitted pursuant to paragraph (1) is denied, or in any other case where an acquisition under this section is terminated and no order with respect to the target of the acquisition is issued under subsection (c), no information obtained or evidence derived from such acquisition, except under circumstances in which the target of the acquisition is determined not to be a United States person, shall be received in evidence or otherwise disclosed in any trial, hearing, or other proceeding in or before any court, grand jury, department, office, agency, regulatory body, legislative committee, or other authority of the United States, a State, or political subdivision thereof, and no information concerning any United States person acquired from such acquisition shall subsequently be used or disclosed in any other manner by Federal officers or employees without the consent of such person, except with the approval of the Attorney General if the information indicates a threat of death or serious bodily harm to any person.

''(e) APPEAL.—

''(1) APPEAL TO THE COURT OF REVIEW.—The Government may file an appeal with the Foreign Intelligence Surveillance Court of Review for review of an order issued pursuant to subsection (c). The Court of Review shall have jurisdiction to consider such appeal and shall provide a written statement for the record of the reasons for a decision under this paragraph.

''(2) CERTIORARI TO THE SUPREME COURT.—The Government may file a petition for a writ of certiorari for review of a decision of the Court of Review issued under paragraph (1). The record for such review shall be transmitted under seal to the Supreme Court of the United States, which shall have jurisdiction to review such decision.

''SEC. 705. JOINT APPLICATIONS AND CONCURRENT AUTHORIZATIONS.

''(a) JOINT APPLICATIONS AND ORDERS.—If an acquisition targeting a United States person under section 703 or section 704 is proposed to be conducted both inside and outside the United States, a judge having jurisdiction under section 703(a)(1) or section 704(a)(1) may issue simultaneously, upon the request of the Government in a joint application complying with the requirements of section 703(b) and section 704(b), orders under section 703(c) and section 704(c), as appropriate.

''(b) CONCURRENT AUTHORIZATION.—

''(1) ELECTRONIC SURVEILLANCE.—If an order authorizing electronic surveillance has been obtained under section 105 and that order is still in effect, during the pendency of that order the Attorney General may authorize, without an order under section 703 or 704, electronic surveillance for the purpose of acquiring foreign intelligence information targeting that United States person while such person is reasonably believed to be located outside the United States.

''(2) PHYSICAL SEARCH.—If an order authorizing a physical search has been obtained under section 304 and that order is still in effect, during the pendency of that order the Attorney General may authorize, without an order under section 703 or 704, a physical search for the purpose of acquiring foreign intelligence information targeting that United States person while such person is reasonably believed to be located outside the United States.

''SEC. 706. USE OF INFORMATION ACQUIRED UNDER TITLE VII.

''Information acquired pursuant to section 702 or 703 shall be considered information acquired from an electronic surveillance pursuant to title I for purposes of section 106.

''SEC. 707. CONGRESSIONAL OVERSIGHT.

''(a) SEMIANNUAL REPORT.—Not less frequently than once every 6 months, the Attorney General shall fully inform, in a manner consistent with national security, the congressional intelligence committees and the Committees on the Judiciary of the Senate and the House of Representatives, concerning the implementation of this title.

''(b) CONTENT.—Each report made under subsection (a) shall include—

''(1) with respect to section 702—

''(A) any certifications made under section 702(g) during the reporting period;

''(B) with respect to each certification made under paragraph (1)(B) of such section, the reasons for exercising the authority under such paragraph;

''(C) any directives issued under section 702(h) during the reporting period;

''(D) a description of the judicial review during the reporting period of any such certifications and targeting and minimization procedures adopted pursuant to subsections (d) and (e) of section 702 utilized with respect to such acquisition, including a copy of any order or pleading in connection with such review that contains a significant legal interpretation of the provisions of section 702;

''(E) any actions taken to challenge or enforce a directive under paragraph (4) or (5) of section 702(h);

''(F) any compliance reviews conducted by the Attorney General or the Director of National Intelligence of acquisitions authorized under subsection 702(a);

''(G) a description of any incidents of noncompliance with a directive issued by the Attorney General and the Director of National Intelligence under subsection 702(h), including—

''(i) incidents of noncompliance by an element of the intelligence community with procedures and guidelines adopted pursuant to subsections (d), (e), and (f) of section 702; and

''(ii) incidents of noncompliance by a specified person to whom the Attorney General and Director of National Intelligence issued a directive under subsection 702(h); and

''(H) any procedures implementing section 702;

''(2) with respect to section 703—

''(A) the total number of applications made for orders under section 703(b);

''(B) the total number of such orders—

''(i) granted;

''(ii) modified; or

''(iii) denied; and

''(C) the total number of emergency acquisitions authorized by the Attorney General under section 703(d) and the total number of subsequent orders approving or denying such acquisitions; and

''(3) with respect to section 704—

''(A) the total number of applications made for orders under 704(b);

''(B) the total number of such orders—

''(i) granted;

''(ii) modified; or

''(iii) denied; and

''(C) the total number of emergency acquisitions authorized by the Attorney General under subsection 704(d) and the total number of subsequent orders approving or denying such applications.

''SEC. 708. SAVINGS PROVISION.

''Nothing in this title shall be construed to limit the authority of the Federal Government to seek an order or authorization under, or otherwise engage in any activity that is authorized under, any other title of this Act.''.

(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—

(1) by striking the item relating to title VII;

(2) by striking the item relating to section 701; and

(3) by adding at the end the following:

''TITLE VII—ADDITIONAL PROCEDURES REGARDING CERTAIN PERSONS OUTSIDE THE UNITED STATES

''Sec. 701. Definitions.

''Sec. 702. Procedures for targeting certain persons outside the United States other than United States persons.

''Sec. 703. Certain acquisitions inside the United States of United States persons outside the United States.

''Sec. 704. Other acquisitions targeting United States persons outside the United States.

''Sec. 705. Joint applications and concurrent authorizations.

''Sec. 706. Use of information acquired under title VII.

''Sec. 707. Congressional oversight.

''Sec. 708. Savings provision.''.

(c) TECHNICAL AND CONFORMING AMENDMENTS.—

(1) TITLE 18, UNITED STATES CODE.—Section 2511(2)(a)(ii)(A) of title 18, United States Code, is amended by inserting ''or a court order pursuant to section 704 of the Foreign Intelligence Surveillance Act of 1978'' after ''assistance''.

(2) FOREIGN INTELLIGENCE SURVEILLANCE ACT OF 1978.—Section 601(a)(1) of the Foreign Intelligence Surveillance Act of 1978 (50 U.S.C. 1871(a)(1)) is amended—

(A) in subparagraph (C), by striking ''and''; and

(B) by adding at the end the following new subparagraphs:

''(E) acquisitions under section 703; and

''(F) acquisitions under section 704;''.

SEC. 102. STATEMENT OF EXCLUSIVE MEANS BY WHICH ELECTRONIC SURVEILLANCE AND INTERCEPTION OF CERTAIN COMMUNICATIONS MAY BE CONDUCTED.

(a) STATEMENT OF EXCLUSIVE MEANS.—Title I of the Foreign Intelligence Surveillance Act of 1978 (50 U.S.C. 1801 et seq.) is amended by adding at the end the following new section:

''STATEMENT OF EXCLUSIVE MEANS BY WHICH ELECTRONIC SURVEILLANCE AND INTERCEPTION OF CERTAIN COMMUNICATIONS MAY BE CONDUCTED

''SEC. 112. (a) Except as provided in subsection (b), the procedures of chapters 119, 121, and 206 of title 18, United States Code, and this Act shall be the exclusive means by which electronic surveillance and the interception of domestic wire, oral, or electronic communications may be conducted.

''(b) Only an express statutory authorization for electronic surveillance or the interception of domestic wire, oral, or electronic communications, other than as an amendment to this Act or chapters 119, 121, or 206 of title 18, United States Code, shall constitute an additional exclusive means for the purpose of subsection (a).''.

(b) OFFENSE.—Section 109(a) of the Foreign Intelligence Surveillance Act of 1978 (50 U.S.C. 1809(a)) is amended by striking ''authorized by statute'' each place it appears in such section and inserting ''authorized by this Act, chapter 119, 121, or 206 of title 18, United States Code, or any express statutory authorization that is an additional exclusive means for conducting electronic surveillance under section 112.''; and

(c) CONFORMING AMENDMENTS.—

(1) TITLE 18, UNITED STATES CODE.—Section 2511(2)(a) of title 18, United States Code, is amended by adding at the end the following:

''(iii) If a certification under subparagraph (ii)(B) for assistance to obtain foreign intelligence information is based on statutory authority, the certification shall identify the specific statutory provision, and shall certify that the statutory requirements have been met.''; and

(2) 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 111 the following new item:

''Sec. 112. Statement of exclusive means by which electronic surveillance and interception of certain communications may be conducted.''.

SEC. 103. SUBMITTAL TO CONGRESS OF CERTAIN COURT ORDERS UNDER THE FOREIGN INTELLIGENCE SURVEILLANCE ACT OF 1978.

(a) INCLUSION OF CERTAIN ORDERS IN SEMI-ANNUAL REPORTS OF ATTORNEY GENERAL.—Subsection (a)(5) of section 601 of the Foreign Intelligence Surveillance Act of 1978 (50 U.S.C. 1871) is amended by striking ''(not including orders)'' and inserting '', orders,''.

(b) REPORTS BY ATTORNEY GENERAL ON CERTAIN OTHER ORDERS.—Such section 601 is further amended by adding at the end the following:

''(c) SUBMISSIONS TO CONGRESS.—The Attorney General shall submit to the committees of Congress referred to in subsection (a)—

''(1) a copy of any decision, order, or opinion issued by the Foreign Intelligence Surveillance Court or the Foreign Intelligence Surveillance Court of Review that includes significant construction or interpretation of any provision of this Act, and any pleadings, applications, or memoranda of law associated with such decision, order, or opinion, not later than 45 days after such decision, order, or opinion is issued; and

''(2) a copy of any such decision, order, or opinion, and any pleadings, applications, or memoranda of law associated with such decision, order, or opinion, that was issued during the 5-year period ending on the date of the enactment of the FISA Amendments Act of 2008 and not previously submitted in a report under subsection (a).

''(d) PROTECTION OF NATIONAL SECURITY.—The Attorney General, in consultation with the Director of National Intelligence, may authorize redactions of materials described in subsection (c) that are provided to the committees of Congress referred to in subsection (a), if such redactions are necessary to protect the national security of the United States and are limited to sensitive sources and methods information or the identities of targets.''.

(c) DEFINITIONS.—Such section 601, as amended by subsections (a) and (b), is further amended by adding at the end the following:

''(e) DEFINITIONS.—In this section:

''(1) FOREIGN INTELLIGENCE SURVEILLANCE COURT.—The term 'Foreign Intelligence Surveillance Court' means the court established by section 103(a).

''(2) FOREIGN INTELLIGENCE SURVEILLANCE COURT OF REVIEW.—The term 'Foreign Intelligence Surveillance Court of Review' means the court established by section 103(b).''.

SEC. 104. APPLICATIONS FOR COURT ORDERS.

Section 104 of the Foreign Intelligence Surveillance Act of 1978 (50 U.S.C. 1804) is amended—

(1) in subsection (a)—

(A) by striking paragraphs (2) and (11);

(B) by redesignating paragraphs (3) through (10) as paragraphs (2) through (9), respectively;

(C) in paragraph (5), as redesignated by subparagraph (B) of this paragraph, by striking ''detailed'';

(D) in paragraph (7), as redesignated by subparagraph (B) of this paragraph, by striking ''statement of'' and inserting ''summary statement of'';

(E) in paragraph (8), as redesignated by subparagraph (B) of this paragraph, by adding ''and'' at the end; and

(F) in paragraph (9), as redesignated by subparagraph (B) of this paragraph, by striking ''; and'' and inserting a period;

(2) by striking subsection (b);

(3) by redesignating subsections (c) through (e) as subsections (b) through (d), respectively; and

(4) in paragraph (1)(A) of subsection (d), as redesignated by paragraph (3) of this subsection, by striking ''or the Director of National Intelligence'' and inserting ''the Director of National Intelligence, or the Director of the Central Intelligence Agency''.

SEC. 105. ISSUANCE OF AN ORDER.

Section 105 of the Foreign Intelligence Surveillance Act of 1978 (50 U.S.C. 1805) is amended—

(1) in subsection (a)—

(A) by striking paragraph (1); and

(B) by redesignating paragraphs (2) through (5) as paragraphs (1) through (4), respectively;

(2) in subsection (b), by striking ''(a)(3)'' and inserting ''(a)(2)'';

(3) in subsection (c)(1)—

(A) in subparagraph (D), by adding ''and'' at the end;

(B) in subparagraph (E), by striking ''; and'' and inserting a period; and

(C) by striking subparagraph (F);

(4) by striking subsection (d);

(5) by redesignating subsections (e) through (i) as subsections (d) through (h), respectively;

(6) by amending subsection (e), as redesignated by paragraph (5) of this section, to read as follows:

''(e)(1) Notwithstanding any other provision of this title, the Attorney General may authorize the emergency employment of electronic surveillance if the Attorney General—

''(A) reasonably determines that an emergency situation exists with respect to the employment of electronic surveillance to obtain foreign intelligence information before

an order authorizing such surveillance can with due diligence be obtained;

''(B) reasonably determines that the factual basis for the issuance of an order under this title to approve such electronic surveillance exists;

''(C) informs, either personally or through a designee, a judge having jurisdiction under section 103 at the time of such authorization that the decision has been made to employ emergency electronic surveillance; and

''(D) makes an application in accordance with this title to a judge having jurisdiction under section 103 as soon as practicable, but not later than 7 days after the Attorney General authorizes such surveillance.

''(2) If the Attorney General authorizes the emergency employment of electronic surveillance under paragraph (1), the Attorney General shall require that the minimization procedures required by this title for the issuance of a judicial order be followed.

''(3) In the absence of a judicial order approving such electronic surveillance, the surveillance shall terminate when the information sought is obtained, when the application for the order is denied, or after the expiration of 7 days from the time of authorization by the Attorney General, whichever is earliest.

''(4) A denial of the application made under this subsection may be reviewed as provided in section 103.

''(5) In the event that such application for approval is denied, or in any other case where the electronic surveillance is terminated and no order is issued approving the surveillance, no information obtained or evidence derived from such surveillance shall be received in evidence or otherwise disclosed in any trial, hearing, or other proceeding in or before any court, grand jury, department, office, agency, regulatory body, legislative committee, or other authority of the United States, a State, or political subdivision thereof, and no information concerning any United States person acquired from such surveillance shall subsequently be used or disclosed in any other manner by Federal officers or employees without the consent of such person, except with the approval of the Attorney General if the information indicates a threat of death or serious bodily harm to any person.

''(6) The Attorney General shall assess compliance with the requirements of paragraph (5).''; and

(7) by adding at the end the following:

''(i) In any case in which the Government makes an application to a judge under this title to conduct electronic surveillance involving communications and the judge grants such application, upon the request of the applicant, the judge shall also authorize the installation and use of pen registers and trap and trace devices, and direct the disclosure of the information set forth in section 402(d)(2).''.

SEC. 106. USE OF INFORMATION.

Subsection (i) of section 106 of the Foreign Intelligence Surveillance Act of 1978 (8 U.S.C. 1806) is amended by striking ''radio communication'' and inserting ''communication''.

SEC. 107. AMENDMENTS FOR PHYSICAL SEARCHES.

(a) APPLICATIONS.—Section 303 of the Foreign Intelligence Surveillance Act of 1978 (50 U.S.C. 1823) is amended—

(1) in subsection (a)—

(A) by striking paragraph (2);

(B) by redesignating paragraphs (3) through (9) as paragraphs (2) through (8), respectively;

(C) in paragraph (2), as redesignated by subparagraph (B) of this paragraph, by striking ''detailed''; and

(D) in paragraph (3)(C), as redesignated by subparagraph (B) of this paragraph, by inserting ''or is about to be'' before ''owned''; and

(2) in subsection (d)(1)(A), by striking ''or the Director of National Intelligence'' and inserting ''the Director of National Intelligence, or the Director of the Central Intelligence Agency''.

(b) ORDERS.—Section 304 of the Foreign Intelligence Surveillance Act of 1978 (50 U.S.C. 1824) is amended—

(1) in subsection (a)—

(A) by striking paragraph (1); and

(B) by redesignating paragraphs (2) through (5) as paragraphs (1) through (4), respectively; and

(2) by amending subsection (e) to read as follows:

''(e)(1) Notwithstanding any other provision of this title, the Attorney General may authorize the emergency employment of a physical search if the Attorney General—

''(A) reasonably determines that an emergency situation exists with respect to the employment of a physical search to obtain foreign intelligence information before an order authorizing such physical search can with due diligence be obtained;

''(B) reasonably determines that the factual basis for issuance of an order under this title to approve such physical search exists;

''(C) informs, either personally or through a designee, a judge of the Foreign Intelligence Surveillance Court at the time of such authorization that the decision has been made to employ an emergency physical search; and

''(D) makes an application in accordance with this title to a judge of the Foreign Intelligence Surveillance Court as soon as practicable, but not more than 7 days after the Attorney General authorizes such physical search.

''(2) If the Attorney General authorizes the emergency employment of a physical search under paragraph (1), the Attorney General shall require that the minimization procedures required by this title for the issuance of a judicial order be followed.

''(3) In the absence of a judicial order approving such physical search, the physical search shall terminate when the information sought is obtained, when the application for the order is denied, or after the expiration of 7 days from the time of authorization by the Attorney General, whichever is earliest.

''(4) A denial of the application made under this subsection may be reviewed as provided in section 103.

''(5)(A) In the event that such application for approval is denied, or in any other case where the physical search is terminated and no order is issued approving the physical search, no information obtained or evidence derived from such physical search shall be received in evidence or otherwise disclosed in any trial, hearing, or other proceeding in or before any court, grand jury, department, office, agency, regulatory body, legislative committee, or other authority of the United States, a State, or political subdivision thereof, and no information concerning any United States person acquired from such physical search shall subsequently be used or disclosed in any other manner by Federal officers or employees without the consent of such person, except with the approval of the Attorney General if the information indicates a threat of death or serious bodily harm to any person.

''(B) The Attorney General shall assess compliance with the requirements of subparagraph (A).''.

(c) CONFORMING AMENDMENTS.—The Foreign Intelligence Surveillance Act of 1978 (50 U.S.C. 1801 et seq.) is amended—

(1) in section 304(a)(4), as redesignated by subsection (b) of this section, by striking ''303(a)(7)(E)'' and inserting ''303(a)(6)(E)''; and

(2) in section 305(k)(2), by striking ''303(a)(7)'' and inserting ''303(a)(6)''.

SEC. 108. AMENDMENTS FOR EMERGENCY PEN REGISTERS AND TRAP AND TRACE DEVICES.

Section 403 of the Foreign Intelligence Surveillance Act of 1978 (50 U.S.C. 1843) is amended—

(1) in subsection (a)(2), by striking ''48 hours'' and inserting ''7 days''; and

(2) in subsection (c)(1)(C), by striking ''48 hours'' and inserting ''7 days''.

SEC. 109. FOREIGN INTELLIGENCE SURVEILLANCE COURT.

(a) DESIGNATION OF JUDGES.—Subsection (a) of section 103 of the Foreign Intelligence Surveillance Act of 1978 (50 U.S.C. 1803) is amended by inserting ''at least'' before ''seven of the United States judicial circuits''.

(b) EN BANC AUTHORITY.—

(1) IN GENERAL.—Subsection (a) of section 103 of the Foreign Intelligence Surveillance Act of 1978, as amended by subsection (a) of this section, is further amended—

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

(B) by adding at the end the following new paragraph:

''(2)(A) The court established under this subsection, on its own initiative or upon the request of the Government in any proceeding or a party under section 501(f) or paragraph (4) or (5) of section 703(h), may hold a hearing or rehearing, en banc, when ordered by a majority of the judges that constitute such court upon a determination that—

''(i) en banc consideration is necessary to secure or maintain uniformity of the court's decisions; or

''(ii) the proceeding involves a question of exceptional importance.

''(B) Any authority granted by this Act to a judge of the court established under this subsection may be exercised by the court en banc. When exercising such authority, the court en banc shall comply with any requirements of this Act on the exercise of such authority.

''(C) For purposes of this paragraph, the court en banc shall consist of all judges who constitute the court established under this subsection.''.

(2) CONFORMING AMENDMENTS.—The Foreign Intelligence Surveillance Act of 1978 is further amended—

(A) in subsection (a) of section 103, as amended by this subsection, by inserting ''(except when sitting en banc under paragraph (2))'' after ''no judge designated under this subsection''; and

(B) in section 302(c) (50 U.S.C. 1822(c)), by inserting ''(except when sitting en banc)'' after ''except that no judge''.

(c) STAY OR MODIFICATION DURING AN APPEAL.—Section 103 of the Foreign Intelligence Surveillance Act of 1978 (50 U.S.C. 1803) is amended—

(1) by redesignating subsection (f) as subsection (g); and

(2) by inserting after subsection (e) the following new subsection:

''(f)(1) A judge of the court established under subsection (a), the court established under subsection (b) or a judge of that court, or the Supreme Court of the United States or a justice of that court, may, in accordance with the rules of their respective courts, enter a stay of an order or an order modifying an order of the court established under subsection (a) or the court established under subsection (b) entered under any title of this Act, while the court established under subsection (a) conducts a rehearing, while an appeal is pending to the court established

under subsection (b), or while a petition of certiorari is pending in the Supreme Court of the United States, or during the pendency of any review by that court.

''(2) The authority described in paragraph (1) shall apply to an order entered under any provision of this Act.''.

(d) AUTHORITY OF FOREIGN INTELLIGENCE SURVEILLANCE COURT.—Section 103 of the Foreign Intelligence Surveillance Act of 1978 (50 U.S.C. 1803), as amended by this Act, is further amended by adding at the end the following:

''(i) Nothing in this Act shall be construed to reduce or contravene the inherent authority of the court established by subsection (a) to determine or enforce compliance with an order or a rule of such court or with a procedure approved by such court.''.

SEC. 110. INSPECTOR GENERAL REVIEW OF PREVIOUS ACTIONS.

(a) DEFINITIONS.—In this section:

(1) APPROPRIATE COMMITTEES OF CONGRESS.—The term ''appropriate committees of Congress'' means—

(A) the Select Committee on Intelligence and the Committee on the Judiciary of the Senate; and

(B) the Permanent Select Committee on Intelligence and the Committee on the Judiciary of the House of Representatives.

(2) FOREIGN INTELLIGENCE SURVEILLANCE COURT.—The term ''Foreign Intelligence Surveillance Court'' means the court established by section 103(a) of the Foreign Intelligence Surveillance Act of 1978 (50 U.S.C. 1803(a)).

(3) PRESIDENT'S SURVEILLANCE PROGRAM AND PROGRAM.—The terms ''President's Surveillance Program'' and ''Program'' mean the intelligence activity involving communications that was authorized by the President during the period beginning on September 11, 2001, and ending on January 17, 2007, including the program referred to by the President in a radio address on December 17, 2005 (commonly known as the Terrorist Surveillance Program).

(b) REVIEWS.—

(1) REQUIREMENT TO CONDUCT.—The Inspectors General of the Department of Justice, the Office of the Director of National Intelligence, the National Security Agency, and any other element of the intelligence community that participated in the President's Surveillance Program shall complete a comprehensive review of, with respect to the oversight authority and responsibility of each such Inspector General—

(A) all of the facts necessary to describe the establishment, implementation, product, and use of the product of the Program;

(B) the procedures and substance of, and access to, the legal reviews of the Program;

(C) communications with and participation of individuals and entities in the private sector related to the Program;

(D) interaction with the Foreign Intelligence Surveillance Court and transition to court orders related to the Program; and

(E) any other matters identified by any such Inspector General that would enable that Inspector General to complete a review of the Program, with respect to such Department or element.

(2) COOPERATION AND COORDINATION.—

(A) COOPERATION.—Each Inspector General required to conduct a review under paragraph (1) shall—

(i) work in conjunction, to the extent practicable, with any other Inspector General required to conduct such a review; and

(ii) utilize, to the extent practicable, and not unnecessarily duplicate or delay such reviews or audits that have been completed or are being undertaken by any such Inspector General or by any other office of the Executive Branch related to the Program.

(B) COORDINATION.—The Inspectors General shall designate one of the Inspectors General required to conduct a review under paragraph (1) that is appointed by the President, by and with the advice and consent of the Senate, to coordinate the conduct of the reviews and the preparation of the reports.

(c) REPORTS.—

(1) PRELIMINARY REPORTS.—Not later than 60 days after the date of the enactment of this Act, the Inspectors General of the Department of Justice, the Office of the Director of National Intelligence, the National Security Agency, and any other Inspector General required to conduct a review under subsection (b)(1) shall submit to the appropriate committees of Congress an interim report that describes the planned scope of such review.

(2) FINAL REPORT.—Not later than 1 year after the date of the enactment of this Act, the Inspectors General of the Department of Justice, the Office of the Director of National Intelligence, the National Security Agency, and any other Inspector General required to conduct a review under subsection (b)(1) shall submit to the appropriate committees of Congress and the Commission established under section 301(a) a comprehensive report on such reviews that includes any recommendations of any such Inspectors General within the oversight authority and responsibility of any such Inspector General.

(3) FORM.—A report submitted under this subsection shall be submitted in unclassified form, but may include a classified annex. The unclassified report shall not disclose the name or identity of any individual or entity of the private sector that participated in the Program or with whom there was communication about the Program, to the extent that information is classified.

(d) RESOURCES.—

(1) EXPEDITED SECURITY CLEARANCE.—The Director of National Intelligence shall ensure that the process for the investigation and adjudication of an application by an Inspector General or any appropriate staff of an Inspector General for a security clearance necessary for the conduct of the review under subsection (b)(1) is carried out as expeditiously as possible.

(2) ADDITIONAL PERSONNEL FOR THE INSPECTORS GENERAL.—An Inspector General required to conduct a review under subsection (b)(1) and submit a report under subsection (c) is authorized to hire such additional personnel as may be necessary to carry out such review and prepare such report in a prompt and timely manner. Personnel authorized to be hired under this paragraph—

(A) shall perform such duties relating to such a review as the relevant Inspector General shall direct; and

(B) are in addition to any other personnel authorized by law.

SEC. 111. WEAPONS OF MASS DESTRUCTION.

(a) DEFINITIONS.—

(1) FOREIGN POWER.—Subsection (a) of section 101 of the Foreign Intelligence Surveillance Act of 1978 (50 U.S.C. 1801(a)) is amended—

(A) in paragraph (5), by striking ''persons; or'' and inserting ''persons;'';

(B) in paragraph (6), by striking the period and inserting ''; or''; and

(C) by adding at the end the following new paragraph:

''(7) an entity not substantially composed of United States persons that is engaged in the international proliferation of weapons of mass destruction.''.

(2) AGENT OF A FOREIGN POWER.—Subsection (b)(1) of such section 101 is amended—

(A) in subparagraph (B), by striking ''or'' at the end; and

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

''(D) engages in the international proliferation of weapons of mass destruction, or activities in preparation therefor; or''.

(3) FOREIGN INTELLIGENCE INFORMATION.—Subsection (e)(1)(B) of such section 101 is amended by striking ''sabotage or international terrorism'' and inserting ''sabotage, international terrorism, or the international proliferation of weapons of mass destruction''.

(4) WEAPON OF MASS DESTRUCTION.—Such section 101 is amended by adding at the end the following new subsection:

''(p) 'Weapon of mass destruction' means—

''(1) any explosive, incendiary, or poison gas device that is intended or has the capability to cause a mass casualty incident;

''(2) any weapon that is designed or intended to cause death or serious bodily injury to a significant number of persons through the release, dissemination, or impact of toxic or poisonous chemicals or their precursors;

''(3) any weapon involving a biological agent, toxin, or vector (as such terms are defined in section 178 of title 18, United States Code) that is designed, intended, or has the capability of causing death, illness, or serious bodily injury to a significant number of persons; or

''(4) any weapon that is designed, intended, or has the capability of releasing radiation or radioactivity causing death, illness, or serious bodily injury to a significant number of persons.''.

(b) USE OF INFORMATION.—

(1) IN GENERAL.—Section 106(k)(1)(B) of the Foreign Intelligence Surveillance Act of 1978 (50 U.S.C. 1806(k)(1)(B)) is amended by striking ''sabotage or international terrorism'' and inserting ''sabotage, international terrorism, or the international proliferation of weapons of mass destruction''.

(2) PHYSICAL SEARCHES.—Section 305(k)(1)(B) of such Act (50 U.S.C. 1825(k)(1)(B)) is amended by striking ''sabotage or international terrorism'' and inserting ''sabotage, international terrorism, or the international proliferation of weapons of mass destruction''.

(c) TECHNICAL AND CONFORMING AMENDMENT.—Section 301(1) of the Foreign Intelligence Surveillance Act of 1978 (50 U.S.C. 1821(1)) is amended by inserting ''weapon of mass destruction ,'' after ''person,''.

SEC. 112. STATUTE OF LIMITATIONS.

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

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

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

TITLE II—PROTECTION OF PERSONS ASSISTING THE GOVERNMENT

SEC. 201. STATUTORY DEFENSES.

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

''TITLE VIII—PROTECTION OF PERSONS ASSISTING THE GOVERNMENT

''SEC. 801. DEFINITIONS.

''In this title:

''(1) ASSISTANCE.—The term 'assistance' means the provision of, or the provision of access to, information (including communication contents, communications records,

or other information relating to a customer or communication), facilities, or another form of assistance.

''(2) ATTORNEY GENERAL.—The term 'Attorney General' has the meaning given that term in section 101(g).

''(3) CONTENTS.—The term 'contents' has the meaning given that term in section 101(n).

''(4) COVERED CIVIL ACTION.—The term 'covered civil action' means a suit in Federal or State court against any person for providing assistance to an element of the intelligence community.

''(5) ELECTRONIC COMMUNICATION SERVICE PROVIDER.—The term 'electronic communication service provider' means—

''(A) a telecommunications carrier, as that term is defined in section 3 of the Communications Act of 1934 (47 U.S.C. 153);

''(B) a provider of electronic communication service, as that term is defined in section 2510 of title 18, United States Code;

''(C) a provider of a remote computing service, as that term is defined in section 2711 of title 18, United States Code;

''(D) any other communication service provider who has access to wire or electronic communications either as such communications are transmitted or as such communications are stored;

''(E) a parent, subsidiary, affiliate, successor, or assignee of an entity described in subparagraph (A), (B), (C), or (D); or

''(F) an officer, employee, or agent of an entity described in subparagraph (A), (B), (C), (D), or (E).

''(6) INTELLIGENCE COMMUNITY.—The term 'intelligence community' has the meaning given that term in section 3(4) of the National Security Act of 1947 (50 U.S.C. 401a(4)).

''(7) PERSON.—The term 'person' means—

''(A) an electronic communication service provider; or

''(B) a landlord, custodian, or other person who may be authorized or required to furnish assistance pursuant to—

''(i) an order of the court established under section 103(a) directing such assistance;

''(ii) a certification in writing under section 2511(2)(a)(ii)(B) or 2709(b) of title 18, United States Code; or

''(iii) a directive under section 102(a)(4), 105B(e), as added by section 2 of the Protect America Act of 2007 (Public Law 110-55), or 703(h).

''(8) STATE.—The term 'State' means any State, political subdivision of a State, the Commonwealth of Puerto Rico, the District of Columbia, and any territory or possession of the United States, and includes any officer, public utility commission, or other body authorized to regulate an electronic communication service provider.

''SEC. 802. PROCEDURES FOR COVERED CIVIL ACTIONS.

''(a) INTERVENTION BY GOVERNMENT.— In any covered civil action, the court shall permit the Government to intervene. Whether or not the Government intervenes in the civil action, the Attorney General may submit any information in any form the Attorney General determines is appropriate and the court shall consider all such submissions.

''(b) FACTUAL AND LEGAL DETERMINATIONS.—In any covered civil action, any party may submit to the court evidence, briefs, arguments, or other information on any matter with respect to which a privilege based on state secrets is asserted. The court shall review any such submission in accordance with the procedures set forth in section 106(f) and may, based on the review, make any appropriate determination of fact or law. The court may, on motion of the Attorney General, take any additional actions the court deems necessary to protect classified information. The court may, to the extent practicable and consistent with national security, request that any party present briefs and arguments on any legal question the court determines is raised by such a submission even if that party does not have full access to the submission. The court shall consider whether the employment of a special master or an expert witness, or both, would facilitate proceedings under this section.

''(c) LOCATION OF REVIEW.—The court may conduct the review in a location and facility specified by the Attorney General as necessary to ensure security.

''(d) REMOVAL.—A covered civil action that is brought in a State court shall be deemed to arise under the Constitution and laws of the United States and shall be removable under section 1441 of title 28, United States Code.

''(e) SPECIAL RULE FOR CERTAIN CASES.—For any covered civil action alleging that a person provided assistance to an element of the intelligence community pursuant to a request or directive during the period from September 11, 2001 through January 17, 2007, the Attorney General shall provide to the court any request or directive related to the allegations under the procedures set forth in subsection (b).

''(f) APPLICABILITY.—This section shall apply to a civil action pending on or filed after the date of the enactment of this Act.''.

SEC. 202. TECHNICAL AMENDMENTS.

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 adding at the end the following:

''TITLE VIII—PROTECTION OF PERSONS ASSISTING THE GOVERNMENT

''Sec. 801. Definitions

''Sec. 802. Procedures for covered civil actions.''.

TITLE III—COMMISSION ON WARRANTLESS ELECTRONIC SURVEILLANCE ACTIVITIES

SEC. 301. COMMISSION ON WARRANTLESS ELECTRONIC SURVEILLANCE ACTIVITIES.

(a) ESTABLISHMENT OF COMMISSION.—There is established in the legislative branch a commission to be known as the ''Commission on Warrantless Electronic Surveillance Activities'' (in this section referred to as the ''Commission'').

(b) DUTIES OF COMMISSION.—

(1) IN GENERAL.—The Commission shall—

(A) ascertain, evaluate, and report upon the facts and circumstances relating to electronic surveillance activities conducted without a warrant between September 11, 2001 and January 17, 2007;

(B) evaluate the lawfulness of such activities;

(C) examine all programs and activities relating to intelligence collection inside the United States or regarding United States persons that were in effect or operation on September 11, 2001, and all such programs and activities undertaken since that date, including the legal framework or justification for those activities; and

(D) report to the President and Congress the findings and conclusions of the Commission and any recommendations the Commission considers appropriate.

(2) PROTECTION OF NATIONAL SECURITY.—The Commission shall carry out the duties of the Commission under this section in a manner consistent with the need to protect national security.

(c) COMPOSITION OF COMMISSION.—

(1) MEMBERS.—The Commission shall be composed of 9 members, of whom—

(A) 5 members shall be appointed jointly by the majority leader of the Senate and the Speaker of the House of Representatives; and

(B) 4 members shall be appointed jointly by the minority leader of the Senate and the minority leader of the House of Representatives.

(2) QUALIFICATIONS.—It is the sense of Congress that individuals appointed to the Commission should be prominent United States citizens with significant depth of experience in national security, Constitutional law, and civil liberties.

(3) CHAIR; VICE CHAIR.—

(A) CHAIR.—The Chair of the Commission shall be jointly appointed by the majority leader of the Senate and the Speaker of the House of Representatives from among the members appointed under paragraph (1)(A).

(B) VICE CHAIR.—The Vice Chair of the Commission shall be jointly appointed by the minority leader of the Senate and the minority leader of the House of Representatives from among the members appointed under paragraph (1)(B).

(4) DEADLINE FOR APPOINTMENT.—All members of the Commission shall be appointed not later than 90 days after the date of the enactment of this Act.

(5) INITIAL MEETING.—The Commission shall hold its first meeting and begin operations not later than 45 days after the date on which a majority of its members have been appointed.

(6) SUBSEQUENT MEETINGS.—After its initial meeting, the Commission shall meet upon the call of the Chair.

(7) QUORUM.—A majority of the members of the Commission shall constitute a quorum, but a lesser number may hold hearings.

(8) VACANCIES.—Any vacancy in the Commission shall not affect its powers and shall be filled in the same manner in which the original appointment was made.

(d) POWERS OF COMMISSION.—

(1) HEARINGS AND EVIDENCE.—The Commission or, on the authority of the Chair, any subcommittee or member thereof may, for the purpose of carrying out this section, hold such hearings and sit and act at such times and places, take such testimony, receive such evidence, and administer such oaths as the Commission, such designated subcommittee, or designated member may determine advisable.

(2) SUBPOENAS.—

(A) ISSUANCE.—

(i) IN GENERAL.—The Commission may issue subpoenas requiring the attendance and testimony of witnesses and the production of any evidence relating to any matter that the Commission is empowered to investigate under this section. The attendance of witnesses and the production of evidence may be required from any place within the United States at any designated place of hearing within the United States.

(ii) SIGNATURE.—Subpoenas issued under this paragraph may be issued under the signature of the Chair of the Commission, the chair of any subcommittee created by a majority of the Commission, or any member designated by a majority of the Commission and may be served by any person designated by such Chair, subcommittee chair, or member.

(B) ENFORCEMENT.—

(i) IN GENERAL.—If a person refuses to obey a subpoena issued under subparagraph (A), the Commission may apply to a United States district court for an order requiring that person to appear before the Commission to give testimony, produce evidence, or both, relating to the matter under investigation. The application may be made within the judicial district where the hearing is conducted or where that person is found, resides, or transacts business. Any failure to obey the order of the court may be punished by the court as civil contempt.

(ii) JURISDICTION.—In the case of contumacy or failure to obey a subpoena issued under subparagraph (A), the United States district court for the judicial district in which the subpoenaed person resides, is served, or may be found, or where the subpoena is returnable, may issue an order requiring such person to appear at any designated place to testify or to produce documentary or other evidence. Any failure to obey the order of the court may be punished by the court as a contempt of that court.

(iii) ADDITIONAL ENFORCEMENT.—In the case of the failure of a witness to comply with any subpoena or to testify when summoned under authority of this paragraph, the Commission, by majority vote, may certify a statement of fact attesting to such failure to the appropriate United States attorney, who shall bring the matter before the grand jury for its action, under the same statutory authority and procedures as if the United States attorney had received a certification under sections 102 through 104 of the Revised Statutes of the United States (2 U.S.C. 192 through 194).

(3) CONTRACTING.—The Commission may, to such extent and in such amounts as are provided in appropriations Acts, enter into contracts to enable the Commission to discharge its duties under this section.

(4) INFORMATION FROM FEDERAL AGENCIES.—

(A) IN GENERAL.—The Commission is authorized to secure directly from any executive department, bureau, agency, board, commission, office, independent establishment, or instrumentality of the Government documents, information, suggestions, estimates, and statistics for the purposes of this section. Each department, bureau, agency, board, commission, office, independent establishment, or instrumentality shall furnish such documents, information, suggestions, estimates, and statistics directly to the Commission upon request made by the Chair, the chair of any subcommittee created by a majority of the Commission, or any member designated by a majority of the Commission.

(B) RECEIPT, HANDLING, STORAGE, AND DISSEMINATION.—Information shall only be received, handled, stored, and disseminated by members of the Commission and its staff in a manner consistent with all applicable statutes, regulations, and Executive orders.

(5) ASSISTANCE FROM FEDERAL AGENCIES.—

(A) GENERAL SERVICES ADMINISTRATION.—The Administrator of General Services shall provide to the Commission on a reimbursable basis administrative support and other services for the performance of the Commission's functions.

(B) OTHER DEPARTMENTS AND AGENCIES.—In addition to the assistance prescribed in subparagraph (A), departments and agencies of the United States may provide to the Commission such services, funds, facilities, staff, and other support services as they may determine advisable and as may be authorized by law.

(6) GIFTS.—The Commission may accept, use, and dispose of gifts or donations of services or property.

(7) POSTAL SERVICES.—The Commission may use the United States mails in the same manner and under the same conditions as departments and agencies of the United States.

(e) STAFF OF COMMISSION.—

(1) IN GENERAL.—

(A) APPOINTMENT AND COMPENSATION.—The Chair, in consultation with Vice Chair and in accordance with rules agreed upon by the Commission, may appoint and fix the compensation of an executive director and such other personnel as may be necessary to enable the Commission to carry out its functions, without regard to the provisions of title 5, United States Code, governing appointments in the competitive service, and without regard to the provisions of chapter 51 and subchapter III of chapter 53 of such title relating to classification and General Schedule pay rates, except that no rate of pay fixed under this paragraph may exceed the equivalent of that payable for a position at level V of the Executive Schedule under section 5316 of title 5, United States Code.

(B) PERSONNEL AS FEDERAL EMPLOYEES.—

(i) IN GENERAL.—The executive director and any personnel of the Commission who are employees shall be employees under section 2105 of title 5, United States Code, for purposes of chapters 63, 81, 83, 84, 85, 87, 89, 89A, 89B, and 90 of that title.

(ii) MEMBERS OF COMMISSION.—Clause (i) shall not be construed to apply to members of the Commission.

(2) DETAILEES.—A Federal Government employee may be detailed to the Commission without reimbursement from the Commission, and such detailee shall retain the rights, status, and privileges of his or her regular employment without interruption.

(3) CONSULTANT SERVICES.—The Commission is authorized to procure the services of experts and consultants in accordance with section 3109 of title 5, United States Code, at rates not to exceed the daily rate paid a person occupying a position at level IV of the Executive Schedule under section 5315 of title 5, United States Code.

(f) SECURITY CLEARANCES FOR COMMISSION MEMBERS AND STAFF.—

(1) EXPEDITIOUS PROVISION OF CLEARANCES.—The appropriate Federal agencies or departments shall cooperate with the Commission in expeditiously providing to the Commission members and staff appropriate security clearances to the extent possible pursuant to existing procedures and requirements, except that no person shall be provided with access to classified information under this section without the appropriate security clearances.

(2) ACCESS TO CLASSIFIED INFORMATION.—All members of the Commission and commission staff, as authorized by the Chair or the designee of the Chair, who have obtained appropriate security clearances, shall have access to classified information related to the surveillance activities within the scope of the examination of the Commission and any other related classified information that the members of the Commission determine relevant to carrying out the duties of the Commission under this section.

(3) FACILITIES AND RESOURCES.—The Director of National Intelligence shall provide the Commission with appropriate space and technical facilities approved by the Commission.

(g) COMPENSATION AND TRAVEL EXPENSES.—

(1) COMPENSATION.—Each member of the Commission may be compensated at a rate not to exceed the daily equivalent of the annual rate of basic pay in effect for a position at level IV of the Executive Schedule under section 5315 of title 5, United States Code, for each day during which that member is engaged in the actual performance of the duties of the Commission.

(2) TRAVEL EXPENSES.—While away from their homes or regular places of business in the performance of services for the Commission, members of the Commission shall be allowed travel expenses, including per diem in lieu of subsistence, in the same manner as persons employed intermittently in the Government service are allowed expenses under section 5703(b) of title 5, United States Code.

(h) NONAPPLICABILITY OF FEDERAL ADVISORY COMMITTEE ACT.—

(1) IN GENERAL.—The Federal Advisory Committee Act (5 U.S.C. App.) shall not apply to the Commission.

(2) PUBLIC MEETINGS.—The Commission shall hold public hearings and meetings to the extent appropriate.

(3) PUBLIC HEARINGS.—Any public hearings of the Commission shall be conducted in a manner consistent with the protection of information provided to or developed for or by the Commission as required by any applicable statute, regulation, or Executive order.

(i) REPORTS AND RECOMMENDATIONS OF COMMISSION.—

(1) INTERIM REPORTS.—The Commission may submit to the President and Congress interim reports containing such findings, conclusions, and recommendations for corrective measures as have been agreed to by a majority of Commission members.

(2) FINAL REPORT.—Not later than one year after the date of its first meeting, the Commission, in consultation with appropriate representatives of the intelligence community, shall submit to the President and Congress a final report containing such information, analysis, findings, conclusions, and recommendations as have been agreed to by a majority of Commission members.

(3) FORM.—The reports submitted under paragraphs (1) and (2) shall be submitted in unclassified form, but may include a classified annex.

(4) RECOMMENDATIONS FOR DECLASSIFICATION.—The Commission may make recommendations to the appropriate department or agency of the Federal Government regarding the declassification of documents or portions of documents.

(j) TERMINATION.—

(1) IN GENERAL.—The Commission, and all the authorities of this section, shall terminate 60 days after the date on which the final report is submitted under subsection (i)(2).

(2) ADMINISTRATIVE ACTIVITIES BEFORE TERMINATION.—The Commission may use the 60-day period referred to in paragraph (1) for the purpose of concluding its activities, including providing testimony to committees of Congress concerning its report and disseminating the final report.

(k) DEFINITIONS.—In this section:

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

(2) UNITED STATES PERSON.—The term ''United States person'' has the meaning given the term in section 101(i) of the Foreign Intelligence Surveillance Act of 1978 (50 U.S.C. 1801(i)).

(l) FUNDING.—

(1) IN GENERAL.—There are authorized to be appropriated such sums as may be necessary to carry out the activities of the Commission under this section.

(2) DURATION OF AVAILABILITY.—Amounts made available to the Commission under paragraph (1) shall remain available until the termination of the Commission.

TITLE IV—OTHER PROVISIONS

SEC. 401. SEVERABILITY.

If any provision of this Act, any amendment made by this Act, or the application thereof to any person or circumstances is held invalid, the validity of the remainder of the Act, any such amendments, and of the application of such provisions to other persons and circumstances shall not be affected thereby.

SEC. 402. EFFECTIVE DATE.

Except as provided in section 404, the amendments made by this Act shall take effect on the date of the enactment of this Act.

SEC. 403. REPEALS.

(a) REPEAL OF PROTECT AMERICA ACT OF 2007 PROVISIONS.—

(1) AMENDMENTS TO FISA.—

(A) IN GENERAL.—Except as provided in section 404, sections 105A, 105B, and 105C of the

Foreign Intelligence Surveillance Act of 1978 (50 U.S.C. 1805a, 1805b, and 1805c) are repealed.

(B) TECHNICAL AND CONFORMING AMENDMENTS.—

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

(ii) CONFORMING AMENDMENTS.—Except as provided in section 404, section 103(e) of the Foreign Intelligence Surveillance Act of 1978 (50 U.S.C. 1803(e)) is amended—

(I) in paragraph (1), by striking ''105B(h) or 501(f)(1)'' and inserting ''501(f)(1) or 702(h)(4)''; and

(II) in paragraph (2), by striking ''105B(h) or 501(f)(1)'' and inserting ''501(f)(1) or 702(h)(4)''.

(2) REPORTING REQUIREMENTS.—Except as provided in section 404, section 4 of the Protect America Act of 2007 (Public Law 110-55; 121 Stat. 555) is repealed.

(3) TRANSITION PROCEDURES.—Except as provided in section 404, subsection (b) of section 6 of the Protect America Act of 2007 (Public Law 110-55; 121 Stat. 556) is repealed.

(b) FISA AMENDMENTS ACT OF 2008.—

(1) IN GENERAL.—Except as provided in section 404, effective December 31, 2009, title VII of the Foreign Intelligence Surveillance Act of 1978, as amended by section 101(a), is repealed.

(2) TECHNICAL AND CONFORMING AMENDMENTS.—Effective December 31, 2009—

(A) the table of contents in the first section of such Act (50 U.S.C. 1801 nt) is amended by striking the items related to title VII;

(B) except as provided in section 404, section 601(a)(1) of such Act (50 U.S.C. 1871(a)(1)) is amended to read as such section read on the day before the date of the enactment of this Act; and

(C) except as provided in section 404, section 2511(2)(a)(ii)(A) of title 18, United States Code, is amended by striking ''or a court order pursuant to section 704 of the Foreign Intelligence Surveillance Act of 1978''.

SEC. 404. TRANSITION PROCEDURES.

(a) TRANSITION PROCEDURES FOR PROTECT AMERICA ACT OF 2007 PROVISIONS.—

(1) CONTINUED EFFECT OF ORDERS, AUTHORIZATIONS, DIRECTIVES.—Notwithstanding any other provision of law, any order, authorization, or directive issued or made pursuant to section 105B of the Foreign Intelligence Surveillance Act of 1978, as added by section 2 of the Protect America Act of 2007 (Public Law 110-55; 121 Stat. 552), shall continue in effect until the expiration of such order, authorization, or directive.

(2) APPLICABILITY OF PROTECT AMERICA ACT OF 2007 TO CONTINUED ORDERS, AUTHORIZATIONS, DIRECTIVES.—Notwithstanding any other provision of this Act or of the Foreign Intelligence Surveillance Act of 1978 (50 U.S.C. 1801 et seq.)—

(A) subject to paragraph (3), section 105A of such Act, as added by section 2 of the Protect America Act of 2007 (Public Law 110-55; 121 Stat. 552), shall continue to apply to any acquisition conducted pursuant to an order, authorization, or directive referred to in paragraph (1); and

(B) sections 105B and 105C of such Act (as so added) shall continue to apply with respect to an order, authorization, or directive referred to in paragraph (1) until the expiration of such order, authorization, or directive.

(3) USE OF INFORMATION.—Information acquired from an acquisition conducted pursuant to an order, authorization, or directive referred to in paragraph (1) shall be deemed to be information acquired from an electronic surveillance pursuant to title I of the Foreign Intelligence Surveillance Act of 1978 (50 U.S.C. 1801 et seq.) for purposes of section 106 of such Act (50 U.S.C. 1806).

(4) PROTECTION FROM LIABILITY.—Subsection (l) of section 105B of the Foreign Intelligence Surveillance Act of 1978, as added by section 2 of the Protect America Act of 2007, shall continue to apply with respect to any directives issued pursuant to such section 105B.

(5) JURISDICTION OF FOREIGN INTELLIGENCE SURVEILLANCE COURT.—Notwithstanding any other provision of this Act or of the Foreign Intelligence Surveillance Act of 1978 (50 U.S.C. 1801 et seq.), section 103(e), as amended by section 5(a) of the Protect America Act of 2007 (Public Law 110-55; 121 Stat. 556), shall continue to apply with respect to a directive issued pursuant to section 105B of the Foreign Intelligence Surveillance Act of 1978, as added by section 2 of the Protect America Act of 2007, until the expiration of all orders, authorizations, and directives issued or made pursuant to such section.

(6) REPORTING REQUIREMENTS.—

(A) CONTINUED APPLICABILITY.—Notwithstanding any other provision of this Act, the Protect America Act of 2007 (Public Law 110-55), or the Foreign Intelligence Surveillance Act of 1978 (50 U.S.C. 1801 et seq.), section 4 of the Protect America Act of 2007 shall continue to apply until the date that the certification described in subparagraph (B) is submitted.

(B) CERTIFICATION.—The certification described in this subparagraph is a certification—

(i) made by the Attorney General;

(ii) submitted as part of a semi-annual report required by section 4 of the Protect America Act of 2007;

(iii) that states that there will be no further acquisitions carried out under section 105B of the Foreign Intelligence Surveillance Act of 1978, as added by section 2 of the Protect America Act of 2007, after the date of such certification; and

(iv) that states that the information required to be included under such section 4 relating to any acquisition conducted under such section 105B has been included in a semi-annual report required by such section 4.

(7) EFFECTIVE DATE.—Paragraphs (1) through (6) shall take effect as if enacted on August 5, 2007.

(b) TRANSITION PROCEDURES FOR FISA AMENDMENTS ACT OF 2008 PROVISIONS.—

(1) ORDERS IN EFFECT ON DECEMBER 31, 2009.—Notwithstanding any other provision of this Act or of the Foreign Intelligence Surveillance Act of 1978 (50 U.S.C. 1801 et seq.), any order, authorization, or directive issued or made under title VII of the Foreign Intelligence Surveillance Act of 1978, as amended by section 101(a), shall continue in effect until the date of the expiration of such order, authorization, or directive.

(2) APPLICABILITY OF TITLE VII OF FISA TO CONTINUED ORDERS, AUTHORIZATIONS, DIRECTIVES.—Notwithstanding any other provision of this Act or of the Foreign Intelligence Surveillance Act of 1978 (50 U.S.C. 1801 et seq.), with respect to any order, authorization, or directive referred to in paragraph (1), title VII of such Act, as amended by section 101(a), shall continue to apply until the expiration of such order, authorization, or directive.

(3) CHALLENGE OF DIRECTIVES; PROTECTION FROM LIABILITY; USE OF INFORMATION.—Notwithstanding any other provision of this Act or of the Foreign Intelligence Surveillance Act of 1978 (50 U.S.C. 1801 et seq.)—

(A) section 103(e) of such Act, as amended by section 113, shall continue to apply with respect to any directive issued pursuant to section 702(h) of such Act, as added by section 101(a);

(B) section 702(h)(3) of such Act (as so added) shall continue to apply with respect to any directive issued pursuant to section 702(h) of such Act (as so added);

(C) section 703(e) of such Act (as so added) shall continue to apply with respect to an order or request for emergency assistance under that section;

(D) section 706 of such Act (as so added) shall continue to apply to an acquisition conducted under section 702 or 703 of such Act (as so added); and

(E) section 2511(2)(a)(ii)(A) of title 18, United States Code, as amended by section 101(c)(1), shall continue to apply to an order issued pursuant to section 704 of the Foreign Intelligence Surveillance Act of 1978, as added by section 101(a).

(4) REPORTING REQUIREMENTS.—

(A) CONTINUED APPLICABILITY.—Notwithstanding any other provision of this Act or of the Foreign Intelligence Surveillance Act of 1978 (50 U.S.C. 1801 et seq.), section 601(a) of such Act (50 U.S.C. 1871(a)), as amended by section 101(c)(2), and sections 702(l) and 707 of such Act, as added by section 101(a), shall continue to apply until the date that the certification described in subparagraph (B) is submitted.

(B) CERTIFICATION.—The certification described in this subparagraph is a certification—

(i) made by the Attorney General;

(ii) submitted to the Select Committee on Intelligence of the Senate, the Permanent Select Committee on Intelligence of the House of Representatives, and the Committees on the Judiciary of the Senate and the House of Representatives;

(iii) that states that there will be no further acquisitions carried out under title VII of the Foreign Intelligence Surveillance Act of 1978, as amended by section 101(a), after the date of such certification; and

(iv) that states that the information required to be included in a review, assessment, or report under section 601 of such Act, as amended by section 101(c), or section 702(l) or 707 of such Act, as added by section 101(a), relating to any acquisition conducted under title VII of such Act, as amended by section 101(a), has been included in a review, assessment, or report under such section 601, 702(l), or 707.

(5) TRANSITION PROCEDURES CONCERNING THE TARGETING OF UNITED STATES PERSONS OVERSEAS.—Any authorization in effect on the date of enactment of this Act under section 2.5 of Executive Order 12333 to intentionally target a United States person reasonably believed to be located outside the United States shall continue in effect, and shall constitute a sufficient basis for conducting such an acquisition targeting a United States person located outside the United States until the earlier of—

(A) the date that such authorization expires; or

(B) the date that is 90 days after the date of the enactment of this Act.

SEC. 405. NO RIGHTS UNDER THE FISA AMENDMENTS ACT OF 2008 FOR UNDOCUMENTED ALIENS.

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

SEC. 406. SURVEILLANCE TO PROTECT THE UNITED STATES.

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

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

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

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

The SPEAKER pro tempore. Pursuant to House Resolution 1041, the motion shall be debatable for 1 hour, with 40 minutes equally divided and controlled by the chairman and ranking minority member of the Committee on the Judiciary and 20 minutes equally divided and controlled by the chairman and ranking minority member of the Permanent Select Committee on Intelligence.

The gentleman from Michigan (Mr. CONYERS) and the gentleman from Texas (Mr. SMITH) each will control 20 minutes, and the gentleman from Texas (Mr. REYES) and the gentleman from Michigan (Mr. HOEKSTRA) each will control 10 minutes.

The Chair recognizes the gentleman from Michigan.

GENERAL LEAVE

Mr. CONYERS. Mr. Speaker, I ask unanimous consent that all Members have 5 legislative days to revise and extend their remarks and include extraneous material on the bill under consideration.

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

There was no objection.

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

Ladies and gentlemen of the House, we finally come to the point in time where we consider the Foreign Intelligence Surveillance Act amendments, and I am delighted to bring this measure to the floor.

I begin by observing that there are few rights that are more fundamental to our democracy than the right to have protections against unreasonable search and seizure, and there are few responsibilities that are more important than the government's protecting us from foreign threats. I submit that the measure before us does both of those and regards them as the two most important acts that we can pursue as responsible Members of the Congress. That conflict or tension goes to the very core of who we are as a Nation.

Now, for more than 30 years, we have relied on the Foreign Intelligence Surveillance Act to strike the appropriate balance between the government's need to protect our rights from foreign attack and our citizens' right to be free from unreasonable searches and seizures and to have freedom of speech. The heart of that bargain was that the government could indeed use its awesome power of surveillance but only through independent court review. That's FISA since 1978.

Now, a few years ago, the administration unilaterally chose to engage in warrantless surveillance of American citizens without court review. And last August, when this scheme appeared to be breaking down, this administration pushed through a law that it had caused to be drafted that essentially transferred the power of independent review from the courts to the Attorney General of the United States. Today, we will be voting on legislation to restore that proper balance.

And so we present to you an uncomplicated consideration of a measure that has three titles. The first allows the government to obtain a single court order to approve surveillance against all members of any known terrorist group. It includes important safeguards to make sure that this power is not used to target innocent Americans.

□ 1215

The chairman of the Intelligence Committee has a lot more to say about that.

The second title deals with the difficult issue of how we make sure that those telecom carriers who assisted the government in the aftermath of the September 11 tragedy are not placed in a position where they cannot defend themselves in court.

And then, finally, the last title provides an accounting of the highly controversial warrantless surveillance program. The administration tells us they have nothing to hide and the program was lawful in their program or its implementation. If that is the case, they should have nothing to fear from this blue ribbon commission that will be created by the enactment of the provision before us.

Now, we learned only yesterday that the Federal Bureau of Investigation was continuing to misuse the authorities that we granted it under the PATRIOT Act 6 years ago to unlawfully obtain information about law-abiding Americans. Just yesterday. We learned 4 days ago that the National Security Agency was using its massive power to create a nationwide database of American citizens. Four days ago.

And so that's why I believe it important that we include the civil liberties safeguards set forth in the legislation today. We have been working very closely with the American Civil Liberties Union in that regard, and we have a half dozen other organizations that have fully endorsed the bill.

The legislation before us gives the administration and the agencies every tool they need to protect our Nation against terrorism, while at the same time protecting our own citizens' civil rights and liberties. I urge that we carefully examine the proposition before us.

And I will reserve the balance of my time.

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

This debate today is not about Republican or Democratic arguments. It is not about right or left ideology. It is simply about protecting our country, and it is about protecting American lives. This might be a good time to recall the story of the American soldiers who were killed in Iraq last May. When the U.S. military discovered that the soldiers had been kidnapped by terrorists, they launched a full scale search and rescue mission.

In the early hours of the operation, U.S. intelligence officials on the ground discovered a lead that required immediate electronic surveillance of telephone conversations. But the terrorist loophole, which requires a court order from Washington before conducting surveillance on a foreign target, prevented our intelligence officials from gathering information from almost 10 hours.

The body of one of the soldiers was later found in the Euphrates River. The terrorists claim to have executed the other two soldiers.

We will never know if that information could have saved the lives of our soldiers. But we do know that the terrorist loophole tied our hands then and perhaps is costing us lives now.

Prior to enactment of the Protect America Act, the Director of National Intelligence, Admiral McConnell, warned Congress that our intelligence community was missing two-thirds of all overseas terrorist communications. Three weeks ago, the Protect America Act expired, and our intelligence community lost the tools they need to monitor terrorists overseas and protect Americans here at home. We may never recover the foreign intelligence lost because of Congress's inaction.

This intelligence might have given us information about terrorist plots or foreign espionage. I hope these missed opportunities will not lead to a terrorist attack in the United States or in other countries that could have been prevented.

We are now 27 days late and much intelligence short because of the Democratic leadership's refusal to consider the bipartisan Senate bill. If they had brought it to the floor 3 weeks ago, it would have passed easily; and America would be safer today. But rather than modernize the Foreign Intelligence Surveillance Act, the Democrat majority's bill actually weakens it.

First, the Democrats' bill requires a court order before the government can begin surveillance of a foreign terrorist overseas. FISA has never required a court order to target foreigners overseas. As we saw in May, this causes significant delays in gathering foreign intelligence, placing Americans at risk.

Second, the Democrats' bill denies giving immunity to telecommunications providers who assisted the government following the terrorist attacks of September 11, 2001. The past

and future cooperation of these companies is essential to our national security.

Ninety-eight percent of America's communications technology is owned by private sector companies. We cannot conduct foreign surveillance without them. But if we continue to subject them to billion-dollar lawsuits, we risk losing their cooperation in the future. In fact, this bill is so flawed that the President has promised to veto it. Even more, Senator REID, the Democratic majority leader, acknowledges that this legislation will never pass in the Senate.

Congress can and must do better than this bill. Our liberties, our security, and the future of our Nation depend on it.

I urge my colleagues to oppose this fatally flawed piece of legislation, and I ask the Democratic majority to bring the bipartisan Senate bill to the House floor for a vote.

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

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

I am proud to rise today in support of H.R. 3773, the FISA Amendments Act of 2008. This bill arms our intelligence community with powerful new tools to track and identify terrorist targets outside the United States. At the same time, it restores essential constitutional protections to Americans that were sharply eroded when the President signed the law known as the Protect America Act last August.

We have put the security of Americans first and foremost, with close attention to their constitutional rights. We have also included provisions to allow companies that acted lawfully to make that argument to the courts. If they did nothing wrong, as they have said, then they will be immune from any lawsuit.

Title I of this bill ensures that the government does not need to get an individualized warrant when it targets communications of targets overseas, the so-called foreign-to-foreign. This is the central problem that the administration cited with FISA in August, and we have fixed it.

Let me be clear, Mr. Speaker, this bill does not require individual warrants for foreign targets before surveillance can begin. It does require the FISA Court to ensure that the procedures that the government uses to identify foreign targets are designed to protect the rights of Americans. This independent front-end review is necessary to ensure that the rights of Americans are being properly protected before any violations occur. However, we also provide a generous emergency provision, at least 30 days, so that the surveillance can begin in an emergency before the government has to go get approval from a court.

In title II, we address the issue of the lawsuits filed against the telecom companies who allegedly participated in the President's warrantless surveillance program. This bill allows the courts to carefully safeguard classified information under well-established protocols. This information that the companies may wish to use to defend themselves now gives them that opportunity. This will also allow the companies to defend themselves in a secure effort. If they are innocent, they will face no damage. If they broke the law, they will be held to account. But this issue will be decided by a court, the American way.

Title III of this bill establishes a bipartisan national commission to investigate warrantless tapping. I believe that the Nation is deeply concerned about what has gone on for the last 7 years. And I also want to restore some of the trust in the intelligence community. Title III is designed to do just that, by bringing these things into light in a careful and bipartisan manner. The American people deserve to know the truth about what has happened. This provision makes that happen.

This is an important step forward, Mr. Speaker. So I urge my colleagues to vote ''yes.''

I reserve the balance of my time.

Mr. SMITH of Texas. Mr. Speaker, not enough attention is given to what the Director of National Intelligence and the Attorney General think about this piece of legislation; and in order to serve that purpose, I yield 2 minutes to the gentleman from Florida (Mr. FEENEY), who is also a member of the Judiciary Committee.

Mr. FEENEY. Mr. Speaker, there couldn't be a more critical discussion to have this morning before we cast this critical vote. The chairman of the Intelligence Committee, I must say, I respectfully disagree with in terms of the devastating consequences his proposal would have. The Attorney General of the United States and the Director of National Intelligence have looked at this proposal, and here is what they have said about the majority's proposal: ''Requiring prior court approval to gather foreign intelligence from foreign targets located overseas: the reason Congress did not include such a requirement when it passed the original FISA statute and with good reason, these foreign targets have no right to any court review of such surveillance under our Constitution. We know from experience requiring prior court approval is a formula for delay. Thus, this framework would impede vital foreign intelligence collection and put the Nation at unnecessary and greater risk.''

Ladies and gentlemen, assume that you are the head of a corporation or a business in America after America is attacked, thousands of lives and several cities attacked; assuming that there is imminent threats to dozens of other cities and millions of others; assuming the Attorney General or the President contacts you and say that you have access to information that will save millions of Americans. What would you do? I hope you would cooperate.

That is what many companies did, and now they are subject, in San Francisco, to over 50 lawsuits for tens of billions of dollars. The question is whether we ought to protect patriotic companies that for several hundred years have had a privilege to cooperate with government. It's true that technically they may have immunity. But here is what you haven't acknowledged: the immunity is useless to them because they cannot assert it. It would be a violation of Federal law.

Mr. Speaker, I will submit for the RECORD a letter from the general counsel of AT&T, the victim of one of these trial lawyer suits to the tune of tens of billions of dollars as he talks about the state secrets doctrine that prevents them from protecting themselves in a court of law, as he talks about the dilemma that they face in the future going forward if they want to help Americans defend themselves.

Mr. CONYERS. Mr. Speaker, I would like to recognize JIM MARSHALL of Georgia, who has worked with us on this month in and month out, for 1½ minutes.

Mr. MARSHALL. I thank you, Mr. Chairman.

Mr. Speaker, may I engage the chairman of the Judiciary Committee and the chairman of the Intelligence Committee for purposes of a colloquy.

Mr. CONYERS. Of course.

Mr. REYES. I would be happy to oblige my good friend from Georgia.

Mr. MARSHALL. I would like to clarify some elements of the process to be established under title II of the bill we debate today. Title II of the bill would assist the telecommunications carriers in dealing with the civil lawsuits they currently face by permitting them to use classified information in defense of claims against them.

I want to be clear that any review of classified information would only take place in the judge's chambers without the plaintiffs or their representatives present. The bill requires the judge to follow the procedures in section 106(f) of FISA.

Am I correct in my understanding that section 106(f) of FISA requires that the review of any classified information must take place in camera and ex parte and that such classified information must remain secret, that it is not to be disclosed to the plaintiffs, their representatives or any others except those authorized to receive such information by virtue of their security clearances?

Mr. CONYERS. Mr. MARSHALL, I couldn't put it any more appropriately myself.

Mr. REYES. That is correct.

Mr. MARSHALL. I would also like to clarify what sort of trial would be involved in this process. Am I correct in my understanding that under the bill being debated, if this judicial process in any way involves classified information, the classified portion of the trial

would be conducted by a judge without a jury; the judge would privately inspect, but not reveal, classified information relevant to the case; and that the process would be limited to the in camera ex parte procedures already outlined in FISA?

Mr. REYES. That is correct.

Mr. CONYERS. I agree, as well.

□ 1230

Mr. SMITH of Texas. Mr. Speaker, I yield 2 minutes to the gentleman from Iowa (Mr. KING), a member of the Judiciary Committee.

Mr. KING of Iowa. I thank the ranking member for yielding.

Mr. Speaker, you know, we are here not really talking about the issue of rights. I haven't found anyone yet who has had their rights trampled on, their rights to be free from unreasonable search and seizure, as the chairman announced from the beginning.

As I look at what is going on here in policy, there is a situation going on right now in New York, in that area, where you have contractors that answered the call and the crisis of 9/11, and they are under lawsuits by the thousands, and I think we are in pretty much unanimous agreement that we should indemnify them for answering the call to protect America. I don't understand the difference between why we would not want to indemnify an information company that answered the call to protect America.

To me, those are the closest two comparisons that we can get. If we protect contractors when they went to that smoking hole in that war zone, why won't we protect telecommunication companies when they stepped up on good faith and believed that they were legally operating under the law?

Where is that first citizen that has had their privacy violated? I haven't found one yet. None have been brought forward. I sat in hours of classified briefings. No one even uttered the name of a person who had their rights violated.

The chairman talked about restoring the proper balance. Well, here is the thing that sits behind this restoring the proper balance. This is from page 8 of the AT&T letter. ''The legal paradox has implications not just for the carrier defendants, but for the Nation's security in general. It suggests to private companies that even good-faith cooperation is apparently authorized, and lawful intelligence activity can expose them to serious legal and business risk. This creates incentives to resist cooperation.''

That sets up a scenario where we are saying to companies, cooperate with us, but you might have to face, and will face, billions and billions of dollars of lawsuits, two score more of lawsuits, two dozen or more aggregated under a single court, Ninth Circuit, San Francisco, and they are watching their share values go down and watching their opportunities diminish around the world. And then we put them in the face of the paradox, what do you do if there is another attack on America?

These scales of justice are now out of balance because the trial lawyers have put this thing out of balance, and the political pressure and the risk to the American people of the security of being attacked again are what is weighing on the other side. When the fear of attack gets greater and when the political benefit becomes that point, then we will offset the trial lawyers and we will get a bill.

Mr. CONYERS. Mr. Speaker, I yield 2 minutes to the gentleman from New York (Mr. NADLER), a coauthor of the bill before us today and the chairman of the Constitution Committee.

Mr. NADLER. Mr. Speaker, I thank the gentleman for yielding.

Mr. Speaker, I rise in support of this carefully crafted legislation which gives our intelligence agencies all the tools they say they need to protect our country while protecting our fundamental civil liberties.

In the last few weeks, we have heard countless assertions from our colleagues on the other side that are false and misleading. They claim that we allowed the Protect America Act to expire, when it was the Republicans who blocked attempts to extend that bill temporarily, and they continue to claim that retroactive immunity for the telecom companies is necessary for the security of the country.

The telecom companies aided the administration's surveillance program. Some people, American citizens, believe their constitutional rights were violated and brought a lawsuit against the government and telecom companies.

There are two narratives here. One is that these companies patriotically aided the administration to protect Americans from terrorists. The other is that they conspired with a lawless administration to violate the constitutional rights of Americans. Which of these narratives is right is for a court to decide. It is not the role of Congress to decide legal cases between private parties. That is why we have courts.

We had told the telecom companies they would not be subject to lawsuits for doing their duty. But whether they were doing their duty or abusing the rights of Americans is precisely the issue.

In any event, the existing law already provides absolute immunity if their help was requested and if they were given a statement by the Attorney General or various other government officials stating that the requested help did not require a warrant or court order and would not break the law. They have immunity. Whether those statements are true or not, they can rely absolutely on the government's assertions.

So why do they think they need retroactive immunity? Because of the administration's sweeping assertion of the State secrets doctrine, will has prevented the companies from claiming their immunity.

This bill allows the telecom companies in secret in court to present the evidence for their immunity and to get their immunity, if they obeyed the law. And I remind that obeying the law means simply obtaining a statement from the government that the company's help is needed and that the requested help does not require a court order or violated the law. A company that assisted in spying on its customers without getting that simple assurance from the government does not deserve immunity. And even if we voted retroactive immunity, they would still have to prove that immunity for what they do next week in the same way, and they would have the same problem.

So, by solving the State secrets problem, we give the companies the immunity they need, if they need it, and if they obeyed the law. This still gives our intelligence agencies what they need. I urge its adoption.

Mr. Speaker, I rise in strong support of H.R. 3733, the FISA Amendments Act. This carefully crafted legislation gives our intelligence agencies all the tools they say they need to protect our country, while protecting our fundamental civil liberties.

Mr. Speaker, let us be clear about what this legislation does not do. It does not require individual warrants for the targeting of foreign terrorists located outside the United States. For three decades, that has been the law, and it will still be the law under this bill. There is no dispute about this.

The bill starts with the recognition that the intelligence community needs to surveil all members of a terrorist group—once that group is identified. Any suggestion that it requires individualized warrants to intercept communications of terrorists overseas is wrong.

The bill maintains the traditional requirement of a warrant when our intelligence agencies seek to conduct surveillance on Americans. And because some foreign surveillance may record conversations with Americans, the bill requires that, when the Government proposes to undertake surveillance of a foreign group or entity, it must first apply to the FISA court, except that, in an emergency, the surveillance can begin immediately, and the court can consider the surveillance procedures later.

In both this bill and the Senate bill, the government must inform the court of the procedures it will use to ensure that it is targeting only foreigners overseas and how it will ''minimize'' domestic information it might inadvertently pick up. The only real difference is that the Senate bill lets them listen first, then go to the court within 5 days. This bill requires that they go to the FISA Court first. But in an emergency, we give them 7 days to listen before they go to the court. So will someone please tell me how this minor difference between the bills somehow gives rights to terrorist?

There is one thing that this bill does not do, and this great body must not do—provide blanket, retroactive immunity to the telecommunication companies that assisted in the President's warrantless wiretapping program. Such a move would fly in the face of our notions of justice.

Mr. Speaker, in the last few weeks, we have heard countless assertions from our colleagues on the other side that are false and

misleading. They claim that we allowed the Protect America Act to expire—when it was the Republicans who blocked attempts to extend that legislation temporarily. And they continue to claim that retroactive immunity for the telecom companies is necessary for the security of the country. But they have failed to provide any evidence for that claim.

The telecom companies aided the Administration's surveillance program. Some people—American citizens—believe their constitutional rights were violated, and brought suit against the government and the telecom companies. There are two narratives here. One is that the telecom companies patriotically aided the Administration in protecting Americans from terrorists. The other is that the telecom companies conspired with a lawless Administration to violate the Constitutional rights of Americans. Which of these narratives is correct is for a court to decide.

It is not the role of Congress to decide legal cases between private parties. That is why we have courts. If the claims are not meritorious, the courts will throw them out. But if the claims do have merit, we have no right to dismiss them without even reviewing the evidence.

We are told that the telecom companies should not be subject to lawsuits for doing their duty. But whether they were doing their duty, or abusing the rights of Americans, is precisely the issue. And that is a legal issue for the courts to decide.

In any event, the existing law, in a wise balance of national security and constitutional rights that this bill does not change, already provides absolute immunity to the telecom companies if their help was requested, and if they were given a statement by the Attorney General, or by various other government officials, stating that the requested help did not require a warrant or court order and would not break the law. They have immunity whether those statements were true or not. They can rely absolutely on the government's assertions.

So why do they think they need retroactive immunity? Because of the Administration's sweeping assertion of the ''state secrets'' doctrine, which has prevented the companies from claiming their immunity.

Title II of this bill will allow the telecoms to show the courts, in a secure setting, if they were obeying the law or if they weren't. It will allow the telecom companies to assert their immunity in court, and to present the relevant documents and evidence to the court in a secret session that protects any ''state secrets.'' The courts can then judge whether the telecom company obeyed the law—in which case it has complete immunity—or whether it did not. And, I remind you, that ''obeying the law'' means simply obtaining a statement from the government that the company's help is needed, and that the requested help does not require a court order or violate the law. A company that assisted in spying on its customers without getting that simple assurance does not deserve immunity.

Mr. Speaker, this bill gives our intelligence agencies what they say they need. But it also demands that their extraordinary powers be used properly, and that they follow our laws and our Constitution. This bill will help limit this Administration's disregard for the rule of law. It is a carefully crafted measure, and deserves the support of every member in this body.

Mr. SMITH of Texas. I yield 2 minutes to the gentleman from Indiana (Mr. PENCE), a member of the Judiciary Committee and the Foreign Affairs Committee.

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

Mr. PENCE. I thank the gentleman for yielding.

Mr. Speaker, I rise in opposition to the FISA Amendments Act of 2008. America is at war. We have to do all we can to protect ourselves from those who seek to do us and our communities and our families harm. But for the past few weeks, we have unilaterally disarmed, because this House has failed to pass an acceptable long-term extension of the Foreign Intelligence Surveillance Act, and it will fail again today.

The United States Senate passed a workable bipartisan compromise by a vote of 68–29 that extended FISA for nearly 6 years. The Senate bill provided necessary immunity to communication providers who aided the government after 9/11, and they are now facing numerous frivolous lawsuits as a result. It also closed a massive loophole in our foreign intelligence surveillance laws that prevents us from listening to terrorists in one foreign country who are talking to a terrorist in another foreign country; yet the Senate bill is not before us today.

It is extraordinary that a bipartisan compromise and accomplishment in the United States Senate is not being considered before this House today.

Last August, Republicans and Democrats on the Judiciary Committee came together in the Protect America Act and we forged a compromise, but it was only embraced in the short term. And, sadly, the Senate will not pass this bill, even if it passes the House today, and if it did, the President will veto it. So what we are involved in here is a futile attempt at compromise that will fail.

Speaking less as a Congressman and more as a father and as an American who was here on September 11, I urge my colleagues to take a breath, to step back, to examine the spirit of compromise evidenced by our colleagues in the Senate, and find a way to give our foreign intelligence gathering the tools they need to protect our families.

Mr. REYES. Mr. Speaker, I am proud to say that the 110th Congress is not a rubber stamp for anybody, the Senate or the administration.

I now yield 2½ minutes to the distinguished gentleman from Iowa (Mr. BOSWELL), the vice chairman of the Intelligence Committee.

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

Mr. BOSWELL. Mr. Speaker, I thank Chairman REYES for the time and your dedicated leadership and hard work to effect oversight over our Nation's multiple intelligence gathering agencies.

In the process of this debate regarding FISA, we have strived to make America safe and exercise and protect the Constitution and Americans' civil liberties. As I have heard Congressman TIERNEY say at different times, if we had followed FISA, we wouldn't be here today, and I appreciate that very, very much. Unfortunately, for whatever reason, and I don't know, none of us do, whatever reason, this President has repeatedly used executive orders and end-run the provisions, protections of FISA that work for the purposes intended.

Several weeks ago, I became concerned that our private telecom companies might be falsely accused and have the effect of putting a chill on their response in the future. I felt a gut confidence that pressure from on high was put on, i.e., we have an emergency, and we, the government, must have your assistance or a terrible event would happen. I think back on my own training in my life, and I know something about those terrible events that could happen, because I put together weapons of mass destruction in my own training, so it kind of haunts you sometimes.

So, yes, I, like others, like 20 others, signed a letter of concern. By the way, it was not a Blue Dog letter or a Blue Dog position. It was individuals, some of whom were Blue Dogs.

Now, over the course of these past weeks, a credit to Chairman REYES and Chairman CONYERS and our super staff, an acceptable solution has been found that makes FISA, supports FISA, and gives protection to those who assist within the provisions of the law.

For example, those who feel their civil rights have been violated can seek justice, and the telecoms who feel they have complied with the law can be defended. A judge would review the classified evidence and decide. This means to me that the Constitution and civil rights are protected, and the telecoms who are asked or pressured to assist in an emergency can know that classified evidence will be seen by the judge. Classified evidence would be seen by a judge and the providers' defense would be taken into account. I believe this to be a solution.

So, in closing, I would say this will protect the Constitution and the American people's civil rights, plus I support the bill because it gives the intelligence community the tools it needs and gives the telecom companies the means to defend themselves from unfair lawsuits. The bill provides telecom companies a way to present their defense in district court without the administration using State secrets to block the defense. If a company is simply doing its patriotic duty and following the law, this bill ensures the company will not be punished.

I urge everyone who signed the letter with me to support this resolution.

Mr. SMITH of Texas. Mr. Speaker, I yield 2 minutes to the gentleman from Ohio (Mr. CHABOT), a member of both the Judiciary Committee and the Foreign Affairs Committee.

Mr. CHABOT. I thank the gentleman for yielding.

Mr. Speaker, we are on the floor today debating yet again another set of amendments to FISA, another set of amendments that limit the ability of law enforcement and intelligence communities to make this Nation safer, another set of amendments that have no chance of becoming law. What these amendments do confirm is that we are a litigious society, that some are willing to put lawsuits over safety.

Prior to the passage of the Protect America Act, our intelligence community told us that they missed more than two-thirds of all overseas terrorist communications because of gaps and inconsistencies in the law. In August, we closed those holes, giving law enforcement and the intelligence communities the tools and resources they need to stay one step ahead.

Disappointingly, 26 days have passed since those provisions expired. For 26 days now, our law enforcement and intelligence communities have had to revert back to the status quo. They have had to revert back to a status that allows terrorists to have the upper hand. And yet this Chamber continues to bring legislation that we know will not do the job, all the while, knowing that there is a solution, a bipartisan solution, to this predicament.

The bipartisan solution lies in the legislation passed by the Senate 30 days ago. These amendments continue and build on the authorizations provided by the Protect America Act, ensuring that surveillance continues on foreign targets outside the United States. Immunity is provided to our communication partners, FISA applications, and orders are processed in a more timely manner, and lengthening the periods of emergency authorization for electronic surveillance.

Yet this bill is mindful of our Constitution and the protections it affords to U.S. citizens, whether they are inside or outside the United States. Moreover, the authority provided by the bill sunsets in 6 years, allowing Congress to revisit if issues arise.

I urge my colleagues to not make the safety of the American people a partisan issue.

There are many things that we can disagree on, but the safety of this country should not be one of them. Let's not send the message that litigation is more important than patriotism, but that we are committed to standing as one in doing what is necessary and needed to keep this Nation safe.

□ 1245

Mr. CONYERS. Mr. Speaker, could I remind my two distinguished members of Judiciary, MIKE PENCE of Indianapolis and STEVE CHABOT of Ohio, that the reason we are not taking up the Senate provisions is that the House has a better idea, and we are coequal. They don't give us whatever they want.

The Chair is pleased now to recognize BOBBY SCOTT of Virginia, chairman of the Crime Committee, for 2 minutes.

Mr. SCOTT of Virginia. I would like to thank the chairs of the Judiciary Committee and the Intelligence Committee for their hard work in addressing the issue of warrantless surveillance under the Foreign Intelligence Surveillance Act and for introducing legislation that addresses national security challenges presented by global terrorism.

This bill provides that any wiretap which would be legal under the President's proposal will be legal under this legislation. It merely requires that under some circumstances that a warrant be obtained prior to the wiretap or if there is an emergency after the wiretap begins. The warrant procedure is a modest protection of our civil liberties.

This bill does not balance civil liberties with national security, because all of the wiretaps would be permitted; but this bill just provides a little oversight. The idea of wiretaps without oversight has to be considered in the context of some recent documents of the Department of Justice.

Republican-appointed officials have accused this administration of firing U.S. Attorneys because they did not indict Democrats in time to affect an upcoming election. We have been unable to ascertain the truth of the allegations for several reasons.

First, high-ranging administration officials question the credibility of Attorney General Gonzales' original response to the allegations. One high-ranking Justice Department official quit; another pleaded the fifth. White House officials have refused to respond to our subpoenas. It is this Justice Department that seeks unprecedented authority to wiretap citizens without traditional oversight or even articulating the primary purpose of the wiretaps.

Furthermore, the bill does not offer retroactive immunity for illegal activities. The fact is that the telecom companies which may benefit from retroactive immunity already have immunity for any reasonable actions they may have taken. This bill provides a procedural change which ensures that these claims of immunity can properly be considered.

In summary, this bill provides for all of the security protections sought by the President, but it also provides modest protection for our civil liberties. Therefore, we should support the bill.

Mr. SMITH of Texas. Mr. Speaker, I yield 2 minutes to my colleague from Texas (Mr. GOHMERT), who is not only on the Judiciary Committee but also the ranking member of the Crime, Terrorism and Homeland Security Subcommittee.

Mr. GOHMERT. Mr. Speaker, we have just heard reference to the Senate bill; and my friend, for whom I have great respect, our chairman of Judiciary, Chairman CONYERS, mentioned that we are coequal branches. I would submit to you, we are an even more important branch because we are more accountable to the people than the Senate is.

The difference, though, in the Senate bill and this bill is, the Senate Democrats got input and allowed input into the bill from their Republican colleagues, and we are not allowed to make amendments on this bill. All we can do is come up and point out problems with it.

My friend, Mr. NADLER, whom I have come to believe has a brilliant legal intellect, has come on the floor this morning and said that there is false information from our side, that we are falsely misleading. He said that we have been less than honest. That bothers me to no end, because he knows some of the talking points that are being talked on this floor are just not right.

Now, I have read the bill. It's a better bill than the manager's amendment we dealt with last time; it is. But we are still not there, and we still haven't been allowed enough input to make it better.

But we also heard from one of our colleagues across the aisle that said he fought in Afghanistan, and he was a soldier. Thank God we have him and others that would do that. But the telecoms in the week, 2 weeks, 4 weeks right after 9/11, when we did not know if we were going to have thousands of Americans lost any day, they were put in a terrible situation.

You know the law. The law is very restricted on who in the telecom company can see the request or the demand from the administration, from the NSA or whoever makes it. You know that. I pushed to make sure in the law that they are at least allowed to talk to a lawyer, but they are restricted there.

Put yourself in their place. They get a request in any hypothetical case after Americans are killed in an act of war on our soil.

Mr. REYES. Mr. Speaker, I yield 1½ minutes to the gentlewoman from California, Ms. ANNA ESHOO, who chairs our Subcommittee on Intelligence Community Management.

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

Mr. Speaker, I rise in support of H.R. 3773. Today's debate really goes to the heart of the two highest responsibilities of Members of Congress, to preserve our Constitution and to secure our Nation.

Front and center, that's what this bill does, it accomplishes both. It gives the intelligence community the most flexible tools for our professionals for their surveillance of terrorists and other necessary targets overseas. It accomplishes that. It safeguards our constitutional rights by requiring the FISA Court to approve targeting and minimization standards at the front end, when no emergency exists and to assure that Americans are not targeted.

It protects the private sector by providing prospective liability protection for telecommunications companies that provide lawful assistance to the government, and it provides those companies a way to present their defenses

in secure proceedings, in district court, without the administration using state secrets to block those defenses.

These are the most critical tools and safeguards, and that's why Members of Congress can be assured that they will be taking all the right steps by supporting this bill.

The bill is one that we should all support, and I am proud to support it.

Mr. SMITH of Texas. Mr. Speaker, I yield 1 minute to my colleague from Texas (Mr. MCCAUL), who is a member of the Homeland Security Committee and the Foreign Affairs Committee.

Mr. MCCAUL of Texas. Mr. Speaker, we all took an oath in this Chamber to protect and defend the Constitution of the United States from all enemies, both foreign and domestic. That is what this debate here today is really all about.

By allowing the Protect America Act to expire, we are extending constitutional protections to foreign terrorists. This bill does nothing to fix that problem.

We need to pass this Senate bill that passed overwhelmingly on a bipartisan basis. I worked in the Justice Department on FISA warrants. The statute was never designed to apply to foreign terrorists in a foreign country, as recently stated by admiral Bobby Inman, the principal author of the FISA statute.

I want to point out two articles that were in The New York Times today: ''Afghanistan: Taliban Destroy Cell Towers.'' ''Taliban Threatens Afghan Cellphone Companies.''

This is what is happening. We need to protect America now by making the Protect America Act permanent. The Taliban in their own words, their own statements, says the surveillance program has ''caused heavy casualties to Taliban'' in great proportions.

It is time to pass the Protect America Act.

Mr. CONYERS. I wanted my friend Judge GOHMERT to know that the reason we didn't get the bipartisanship that the other body did is that you guys boycotted our meetings. Your ranking member or leader could have sent anybody to our meetings, but you didn't come. So now you are complaining.

Mr. Speaker, I am happy to recognize DEBBIE WASSERMAN SCHULTZ, a valuable member of our Judiciary Committee, for 1 minute.

Ms. WASSERMAN SCHULTZ. Mr. Speaker, I began my service in Congress fighting for the right to privacy. Above all else, Americans' ability to communicate without the fear of having the government tap their phones, listen to their conversations or intercept their private communication is a right that just cannot be discarded.

Our good friends on the other side of the aisle have said if an American is not communicating with a terrorist, then they have nothing to fear. The manner in which the administration has conducted the warrantless surveillance program has undermined our citizens' confidence in the bedrock belief that we live in a free country where we do not live in constant fear of the government looking over our shoulder.

This is a cherished right that has been arrogantly cast aside by an administration run amok. After a careful review of both classified and unclassified materials concerning the administration's warrantless wiretapping program, I, like so many of my Judiciary Committee colleagues, concluded that the immunity that is proposed by the administration is unnecessary and goes too far.

We must be vigilant when protecting our citizens' right to privacy. It is a rare, unique, and important right that we cannot allow to be subjected to death by a thousand cuts. If the administration has its way and this right falls, what is next? We must stand in the breach and make sure that Americans' right to privacy is preserved.

I urge my colleagues to support this bill.

Mr. SMITH of Texas. Mr. Speaker, I yield 1 minute to the gentlewoman from Tennessee (Mrs. BLACKBURN), whom we wish were a member of the Judiciary Committee.

Mrs. BLACKBURN. Mr. Speaker, the legislation before the House today is nothing short of an abdication of the liberal majority's responsibility to protect the American people. Yesterday's Investor's Business Daily editorial sums the bill up nicely, a ''FISA Fix for Lawyers.'' I could not say it better myself. After all, this bill is nothing short of an earmark for the trial bar, and it reveals the brazen partisan interest of this Democrat majority.

Rather than accept the bipartisan legislation adopted in the Senate and endorsed by our Nation's security experts, the liberal elite of this House instead brings forward a $72,440,904 thank you note to the trial bar. Why $72,440,904? That's the amount the trial attorneys have contributed to Democrat candidates in the 2008 election cycle.

But it might only be a down payment for the potential liability interest that they have if they get their way on their earmark bill. We have to say, at what cost? We have heard the story that I used in a Memphis story on February 28 of our three American soldiers who were kidnapped.

Mr. CONYERS. Mr. Speaker, I am honored to recognize the Speaker of the House of Representatives, the Honorable NANCY PELOSI, for 1 minute.

Ms. PELOSI. I thank Mr. CONYERS, the Chair of the Judiciary Committee, for yielding and thank Mr. REYES, the chairman of the Intelligence Committee, for bringing this legislation to the floor. They know, as does each and every one of us, that our primary responsibility is to protect the American people.

Mr. Speaker, we take an oath of office, as has been referenced, to protect and defend the Constitution of the United States from all enemies foreign and domestic.

In the preamble it states that one of our primary responsibilities is to provide for the common defense. We take those responsibilities seriously, and I don't take seriously any statements by some in this body that any person here is abdicating that responsibility.

All of us understand also the role that intelligence plays. In protecting our troops, force protection, that used to be our primary responsibility and now, of course, Homeland Security is part of that.

None of us would send our troops into harm's way without the intelligence to perform their mission and keep them safe, although some have been willing to send our men and women in uniform into harm's way without the equipment they need to keep them safe, but we don't make any accusations against them that they are not patriotic Americans who don't want to protect the American people.

Chairman CONYERS and Chairman REYES have already pointed out in some detail this legislation will meet our responsibility to protect America while also protecting our precious civil liberties. The President has said that our legislation will not make America safe. The President is wrong, and I think he knows it. He knows that our legislation contains within it the principles that were suggested by the Director of National Intelligence, Mr. MCCONNELL, early on, as to what is needed to protect our people in terms of intelligence.

□ 1300

The administration demands that Congress grant immunity to companies for activities about which the President wants only a small number of Members of Congress, and no member of the judicial branch, deciding on any currently filed lawsuits to know anything about.

The bill before us acknowledges that immunity for the companies may already exist under current law and allows that determination to be decided by a judge with due protection for classified information, not by hundreds of people who really do not have the facts.

Why should the administration oppose a judicial determination of whether the companies already have immunity. Well, there are at least three explanations. First, the President knows that it's the administration's incompetence in failing to follow the procedures in statute is what has prevented immunity from being conveyed. That is one possibility. They simply didn't do it right.

Second, the administration's legal argument that the surveillance requests were lawfully authorized was wrong, or public reports that the surveillance activities undertaken by the companies went far beyond anything about which any Member of Congress was notified, as is required by the law.

None of these alternatives is attractive, but they clearly demonstrate why the administration's insistence that Congress provide retroactive immunity has never been about national security or about concerns for the companies. It has always been about protecting the administration.

As important as the issue of immunity might be, it is chiefly important to the administration and the telecommunications companies as they look back to events that occurred as many as 6 years ago. What is truly important to the security of our country and the protections of our Constitution going forward are the amendments made to the FISA bill in title I in this bill that is on the floor today, the so-called surveillance title of the bill.

The bill contains three of the essential provisions of the bill passed by the House in November and, in doing so, explicitly rejects the heart of the President's warrantless surveillance program. Those provisions are:

One, the reinstatement that FISA remains the exclusive means to authorize electronic surveillance. The President likes to think he has inherent authority to surveil, to collect on anybody, and this bill restates that FISA is the exclusive authority. This was a point conceded to in 1978 when the Congress of the United States established the FISA law, passed the FISA law, which was signed by the President of the United States, thereby his recognition of Congress's ability to make the courts, the third branch of government, the exclusive authority for the collection of intelligence in the United States. That is exclusivity.

Second, except in emergencies, FISA Court approval must take place before surveillance begins, but there are exceptions in case of emergency.

Third, a refusal to follow the Senate in excluding, and this is very important because people are talking about the Senate bill as though it is some great thing. This is very important: A refusal to follow the Senate in excluding from the definition of electronic surveillance activities historically considered within the definition. In other words, if they don't want the law to apply to a particular activity, they will just say it doesn't fall into this bill.

If the administration's change in the definition was accepted, FISA-derived information, including U.S. person information, could be data-mined with fewer protections than are currently in place under FISA. This is very important to each and every person in America.

The President insists that we pass the Senate bill as is. Yet even that legislation's chief author, Chairman ROCKEFELLER, agrees that many of the House provisions improve the Senate bill.

This legislation before us today will ensure that our intelligence professionals have the tools they need to protect the American people. And the President knows it.

This legislation will ensure that we protect what it means to be an American, our precious civil rights and civil liberties. Both goals are essential and both are achieved in this bill. I urge its passage.

Mr. SMITH of Texas. Mr. Speaker, I yield myself 1 minute.

Mr. Speaker, this might be a good time to read excerpts from a letter to the Speaker. This letter was written 2 days ago by the Attorney General and by the Director of National Intelligence, and I think Members and the American people are going to be very interested in what these two individuals had to say.

They expressed particular concern about requiring prior court approval to gather foreign intelligence from foreign targets located overseas.

The letter says: ''Congress did not include such a requirement when it passed the original FISA statute, and with good reason. These foreign targets have no right to any court review of such surveillance under our Constitution. We know from experience that requiring prior court approval is a formula for delay. Thus, this framework would impede vital foreign intelligence collection and put the Nation at unnecessary and greater risk.''

They conclude about this bill that it does not provide the intelligence community the tools it needs to collect effectively foreign intelligence information vital for the security of the Nation.

Mr. Speaker, what else do we need to hear? Members need to know this.

I reserve the balance of my time.

Mr. REYES. Mr. Speaker, I yield 1½ minutes to the gentleman from Rhode Island (Mr. LANGEVIN) who serves on our Intelligence Committee.

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

Mr. LANGEVIN. Mr. Speaker, I thank the gentleman for yielding.

Mr. Speaker, I rise in support of H.R. 3773, a careful and reasoned approach to electronic surveillance. Though people have talked a lot about immunity, we must remember that because of changes in technology, this is a bill to update the way we conduct electronic surveillance.

I approached this subject with two principles in mind. First, our surveillance must be effective. Second, the rights of Americans must be protected. On the second point, there is a real difference between the Senate and the House bills.

The issue is how both bills handle the calls of Americans. Under the Senate bill, the DNI and the Attorney General approve surveillance and then go to the court, with no set timeline for ruling. Under the House bill, the program of surveillance, not the specific individual targets, is submitted to the court. The government will essentially ask the court: Is this method of handling the communications of Americans appropriate, careful, and, most importantly, constitutional?

The approval of a program of surveillance allows the government to get approval before there is an operational requirement. So there will never be any operational sacrifice here. If it were going to slow down intelligence collection or cause operational problems, I can see where some might take issue with that. But the simple fact is that the way this bill is drafted, there is no excuse for not getting the approvals in place in advance.

I am all for strong intelligence authorities. The beauty of this bill is it combines that with care for our civil liberties, without sacrificing either.

Mr. HOEKSTRA. Mr. Speaker, I yield 2½ minutes to the gentleman from Missouri (Mr. BLUNT), the distinguished minority whip.

Mr. BLUNT. Mr. Speaker, I thank Mr. HOEKSTRA for the leadership he has given on this issue.

The problem we have with the bill on the floor today is, in everything I read, it can't become law. That is one problem. A bigger problem is that it doesn't address the fundamental question of how we treat these companies for doing what we asked them to do after 9/11.

It is clear from all of the facts that as the FISA law anticipated, that the leaders of the House and the leaders of the Senate on the Intelligence Committee would be informed of what was going on. And, in fact, in October of 2001 and November of 2001, in March of 2002, those leaders were informed. On our side, the ranking Democrat at the time is the current Speaker of the House. Porter Goss, the future CIA director, was the chairman of the committee. They were informed on all of those occasions, and these companies only have liability protection if they were pursuing what was given to them as a lawful government order; orders that Members of Congress, including the now Speaker, were told would be issued to these companies.

This program doesn't work without voluntary compliance on the foreign side. It also doesn't work without subpoenas on the American side, the U.S. side. Every U.S. effort has to include a subpoena. The 1978 law anticipated that. The law we would like to have on the books today continues that. But for foreign subpoenas, to have to get a court order for a foreign request of somebody in a foreign country simply bogs this program down to the point it won't work. We proved that in July of last year when this FISA came to a screeching halt.

This bill is not the improvement that we need. There is a bipartisan majority in the House ready to pass a bill that could go to the President today, be signed today.

We are now 4 weeks away from the time when we said, if we just had a 21-day extension, we would solve this problem. This problem needs to be solved. It needs to be solved now. I urge the majority to step back and bring a bill to the House that can pass and become law.

I urge my colleagues to vote ''no'' on this replacement.

Mr. CONYERS. Mr. Speaker, I recognize an invaluable member of the Judiciary Committee, KEITH ELLISON from Minnesota, for 1 minute.

Mr. ELLISON. Mr. Speaker, today I rise to support the House Democratic FISA bill, a bill that provides for collection of data to protect America against people who would harm us, but also, and very importantly, provides court approval of acquisition and an ongoing process of review and oversight in order to protect Americans' privacy.

The bill goes beyond the RESTORE Act which we passed in the House, and I supported, by adopting statutory protections for U.S. persons overseas to ensure that surveillance of their communications are always conducted through the courts.

The House bill does not confer retroactive immunity on telecom carriers alleged to have participated under the President's warrantless surveillance program. It provides a mechanism for the carriers to assert existing immunity claims and to guarantee that they have a fair hearing in court currently prevented by the administration's assertion of the State secrets privilege.

In order to fully ascertain the scope and legality of the TSP, the House bill also creates a bipartisan commission on warrantless electronic surveillance activities with strong investigatory powers.

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

Mr. HOEKSTRA. Mr. Speaker, I would like to recognize my colleague, the gentleman from Texas (Mr. THORNBERRY) for 3 minutes.

Mr. THORNBERRY. Mr. Speaker, Chairman CONYERS said a few moments ago the House will not be permitted to vote on the Senate bill because he has a better idea. Let me suggest three reasons why he does not have a better idea.

Number one, the bill before us sets up a new process to adjudicate immunity. Now, if a company voluntarily answered the request of their government, they did not do so to get a chance to have another legal process, to pay some more lawyers to file some more motions. That is not what they were doing. They were doing it to answer the call of their country, and I think most Americans believe that Good Samaritans should be thanked rather than punished with a new legal process.

But I would also suggest that this new legal process chills any hope of voluntary cooperation in the future, not just for intelligence but for quick response for law enforcement matters as well.

I don't see how any company can meet the obligations of the laws this Congress has passed to its shareholders and others and voluntarily submit themselves to another legal process to pay some more lawyers and file some more motions.

□ 1315

Secondly, this bill requires court approval of processes, of procedures before foreign surveillance of foreign targets can ever begin.

Now, under the Protect America Act, the FISA Court took months to approve the procedures. And so it's reasonable to assume it's going to take months to approve the procedures under this bill were it to become law. The problem is, you can't begin foreign surveillance of foreign targets under this law until those procedures are approved. And I am perplexed how Members on either side can feel comfortable having months more go by before we can have that intelligence information.

Thirdly, this bill sets up a new commission. And I understand it may be politically desirable to set up a new commission and have new investigations and have some more folks on a commission looking to make their mark. I understand politically why that would be attractive. But it seems to me that, one, there is no need to do that. What do we have the Intelligence Committee for, if it is not to investigate and understand, as has been done thoroughly in this case. So I must conclude that this new commission must be an attempt to deflect responsibility away from those in this Congress who had the responsibility to oversee these programs.

We have a better option. We should take it.

Mr. CONYERS. I am pleased to yield 1½ minutes to the gentlelady from California (Ms. HARMAN), a former member of the Intelligence Committee. I wish I could give her more time.

(Ms. HARMAN asked and was given permission to revise and extend her remarks.)

Ms. HARMAN. My oldest grandchild, Lucy, is 2 today. She, my other two grandchildren, and my four children are never out of my thoughts as I wrestle with what are the right and wise security policies to protect our country.

I served 6 years on the Armed Services Committee, 8 on the Intelligence Committee, and 4 on the Homeland Security Committee where I chair its intelligence subcommittee.

I received so-called ''Gang of Eight'' briefings on the operational details of the terrorist surveillance program from 2003 to 2006, and I regularly receive classified threat briefings.

Some in this Chamber in both parties seek my views on security issues, and I hope my advice is helpful. On the matter before us it is as follows:

First, the world is very dangerous and we need to protect against threats.

Second, actions we take can and must comply fully with the rule of law. FISA has served us well for 30 years. Its framework is still sound.

Third, FISA does need some tweaking, but the technical changes are not controversial.

Fourth, FISA has already provided immunity for telecom firms which follow its provisions. Telecom firms are now protected under FISA.

Fifth, telecom firms are now complying with FISA.

And, sixth, press accounts, especially Monday's story in the Wall Street Journal, make clear there are other programs out there that haven't been told to Congress.

We can't pass retroactive immunity when we don't know what we're talking about.

So happy birthday, Lucy. May you grow up in a country with security and liberty.

Passing the bill before us is a good start.

Mr. HOEKSTRA. Mr. Speaker, at this time I would like to yield 2 minutes to my colleague from the State of Michigan, a member of the Intelligence Committee, Mr. ROGERS.

Mr. ROGERS of Michigan. Mr. Speaker, two problems with where we're going: one is, this will, in effect, require intelligence officials to seek a Federal court warrant for foreign targets overseas. That is undeniable. Everybody in the intelligence community says it. The Senate even came across in a bipartisan bill, led by Democrats, who agree to the same principle and said that's the wrong direction to go to protect America.

The other serious problem: one of your great distinguished Members, ELIJAH CUMMINGS, took a courageous stand in a courageous moment when he had serious crime in his district in Baltimore. He went out, went on TV on a PSA and said, please cooperate with the local police to solve this crime. Please step up and cooperate so that we can solve these crimes together.

What we are effectively doing today, we're effectively telling businesses, large and small, and citizens from neighborhoods to corporate citizens to individual citizens, everybody who every day across America says, I will cooperate with law enforcement to solve crime because it's the right thing to do, you send an absolute chilling effect across. And I've heard this from businesses not related to this particular issue, telecom companies, companies who cooperate on kidnappings, companies that cooperate on trying to find people who are fugitives, who have raped children, people who cooperate on catching drug dealers. They've said, you know, if you show up and ask me that, I want to help. But what this body is telling them, you might not be protected. It might not be just enough. And if you have enough money, and we have enough trial lawyers, you're going to find yourself in court.

So what these people are saying is, maybe I can't cooperate with my government anymore. Maybe I can't, in good faith, like good Samaritans have done all 200-plus years of this great Nation, come forward and say we are in this together. We are united to stop crime, to keep our homes and neighborhoods safe and to protect our country from terrorism.

The CIA case also said it's not good. The military leader said it's dangerous,

the intelligence community said it's dangerous, and so did the Democrats in the Senate. Let's join them and do this right.

Mr. CONYERS. Mr. Speaker, I'm going to recognize BARBARA LEE, but I want my dear friend from Michigan to know you cannot give retroactive immunity when you don't know what you're immunizing. That's the problem.

I turn now to the co-chair of the Progressive Caucus, a distinguished civil rights fighter who has her own experiences, and we yield proudly to BARBARA LEE of California for 1 minute.

Ms. LEE. I want to thank Chairman CONYERS and Chairman REYES for bringing this legislation to the floor which does contain the safeguards necessary to protect the liberties of the American people, while giving the intelligence community powers to protect our Nation, which are very important in this bill.

Now, let me tell you, I know from personal experience about wiretaps during the J. Edgar Hoover period and the unwarranted domestic surveillance and wire tapping as a result of the Cointelpro program. Many innocent people, their lives were destroyed, personal information was gathered from innocent people, yes, including myself, who were no threat to national security. Dr. King and his family were the victims of government-sponsored wiretapping.

We must never go down this road again. So I fully support this bill because it explicitly declares that the FISA Court is the sole authority for electronic surveillance. It prohibits this reverse targeting. It also makes sure that we do not provide retroactive immunity to telecom companies that participated in any illegal spying by this administration.

This bill will protect America and, equally important, protect American civil liberties and values as guaranteed, mind you, guaranteed by the fourth amendment.

Mr. HOEKSTRA. Mr. Speaker, Mr. SMITH and I both have only one speaker remaining, so we would reserve our right to close in the order as determined.

Mr. REYES. Mr. Speaker, I only have one more speaker remaining as well.

Mr. CONYERS. Mr. Speaker, how much time have I remaining?

The SPEAKER pro tempore. The gentleman from Michigan (Mr. CONYERS) has 2¾ minutes remaining.

Mr. CONYERS. The gentleman from Washington (Mr. INSLEE), who has worked with us on this matter, is recognized for 1 minute.

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

Mr. INSLEE. Mr. Speaker, from time to time, we are called to, again, define what it means to be an American. And this is never more so than when security concerns threaten our commitment to liberty. And at those moments, at this moment, we need to be imbued with the spirit of 1776, a spirit against tyranny, a spirit that recognizes that the rule of law is the ultimate bulwark of liberty.

A Nation that threw off the shackles of King George should never yield to an executive who seeks to trample on the rule of law. Whether it was inconvenient, whether it was bothersome, whether it was frustrating, we should never yield to an executive who believes himself above the rule of law. We should never yield to an Executive that, instead of coming to Congress to change a law, simply decides to ignore it.

We are nothing without this commitment. We are everything with it. Stand for liberty. Pass this bill.

Mr. CONYERS. Mr. Speaker, I yield everything but 1 minute to the gentlelady from Illinois, JAN SCHAKOWSKY.

The SPEAKER pro tempore. The gentlewoman from Illinois is recognized for 45 seconds.

Ms. SCHAKOWSKY. This FISA legislation is proof that we can protect the American people, keep our country and our families safe without violating American's civil liberties. The Republicans have posed a false choice, tried to convince us, the American people, that the only way to protect this country from terrorists is to sacrifice our civil liberties, particularly when it comes to this administration perhaps illegally telling the telecommunications companies to share our private communications with them.

The Republicans want to wave a wand, grant amnesty to the phone companies, retroactive immunity to turn over information about their customers, not only letting the companies off the hook, but protecting the administration from judicial scrutiny about its warrantless surveillance programs.

This program, this legislation that we have introduced, is a fair way to resolve this conflict issue.

Mr. CONYERS. Mr. Speaker, I yield to the gentlelady from Texas (Ms. JACKSON-LEE) for a unanimous consent request.

(Ms. JACKSON-LEE of Texas asked and was given permission to revise and extend her remarks.)

Ms. JACKSON-LEE of Texas. Having heard all of the answers to all of the questions that have been raised by the opposition, knowing that full justice, civil liberties and the protection is in this bill, I rise in support of the underlying bill.

Mr. Speaker, I rise today in support of the Senate Amendment to H.R. 3773, the Foreign Intelligence Surveillance Act (FISA). This body has worked diligently with our colleagues in the Senate to ensure that the civil liberties of American citizens are appropriately addressed.

We have worked to not simply reconcile the Senate language with the RESTORE Act (H.R. 3773) which we passed in the House on November 15, 2007, but to go beyond the RESTORE Act as part of FISA Reform legislation by: Adopting provisions from the Senate bill that will for the first time provide statutory protections for U.S. persons overseas, that ensures surveillance of their communications are conducted through the courts; and Providing a mechanism for telecommunications carriers to prove their case that they did not engage in any wrongdoing and to guarantee due process with a fair hearing in court.

Like the RESTORE Act, the FISA reform legislation provides for collection against terrorist organizations such as Al Qaeda, while providing prior court approval of acquisition and an on-going process of review and oversight in order to protect Americans' privacy.

The revised House bill creates a bipartisan commission on Warrantless Electronic Surveillance Activities with strong investigatory powers in order to preserve the rule of law in pending and future lawsuits. This revised version of the bill continues to reiterate FISA's exclusive control for conducting foreign intelligence surveillance, and requires explicit statutory authorization for any means outside of FISA. This is an area where the House version has differed from the Senate.

Homeland security is not a Democratic or a Republican issue, it is not a House or Senate issue; it is an issue for all Americans—all of us need to be secure in our homes, secure in our thoughts, and secure in our communications.

I find it disturbing that our Republican colleagues will not join us to ensure that Americans are safe here and abroad. Disturbing that they do not recognize that we must protect the civil liberties of this nation just as we protect American lives.

Mr. Speaker, in August of this year, I strongly opposed S. 1927, the so-called ''Protect America Act'' (PAA) when it came to a vote on the House floor. Had the Bush Administration and the Republican-dominated 109th Congress acted more responsibly in the two preceding years, we would not have been in the position of debating legislation that had such a profoundly negative impact on the national security and on American values and civil liberties in the crush of exigent circumstances. As that regrettable episode clearly showed, it is true as the saying goes that haste makes waste.

The PAA was stampeded through the Congress in the midnight hour of the last day before the long August recess on the dubious claim that it was necessary to fill a gap in the nation's intelligence gathering capabilities identified by Director of National Intelligence Mike McConnell. In reality it would have eviscerated the Fourth Amendment to the Constitution and represented an unwarranted transfer of power from the courts to the Executive Branch and a Justice Department led at that time by an Attorney General whose reputation for candor and integrity was, to put it charitably, subject to considerable doubt.

Under the House bill, the Foreign Intelligence Surveillance Court, FISC is indispensable and is accorded a meaningful role in ensuring compliance with the law. The bill ensures that the FISC is empowered to act as an Article III court should act, which means the court shall operate neither as a rubberstamp nor a bottleneck. Rather, the function of the court is to validate the lawful exercise of executive power on the one hand, and to act as the guardian of individual rights and liberties on the other.

Moreover, Mr. Speaker, it is important to point out that the loudest demands for blanket immunity did not come from the telecommunications companies but from the administration, which raises the interesting question of whether the administration's real motivation is to shield from public disclosure the ways and means by which government officials may have ''persuaded'' telecommunications companies to assist in its warrantless surveillance programs. I call my colleagues' attention to an article published in the Washington Post in which it is reported that Joseph Nacchio, the former CEO of Qwest, alleges that his company was denied NSA contracts after he declined in a February 27, 2001 meeting at Fort Meade with National Security Agency, NSA, representatives to give the NSA customer calling records.

To give a detailed illustration of just how superior the RESTORE Act is to the ill-considered and hastily enacted Protect America Act, I wish to take a few moments to discuss an important improvement in the bill that was adopted in the full Judiciary Committee markup.

My amendment, which was added during the markup, made a constructive contribution to the RESTORE Act by laying down a clear, objective criterion for the administration to follow and the FISA court to enforce in preventing reverse targeting.

''Reverse targeting,'' a concept well known to members of this Committee but not so well understood by those less steeped in the arcana of electronic surveillance, is the practice where the Government targets foreigners without a warrant while its actual purpose is to collect information on certain U.S. persons.

One of the major concerns that libertarians and classical conservatives, as well as progressives and civil liberties organizations, have with the PAA is that the understandable temptation of national security agencies to engage in reverse targeting may be difficult to resist in the absence of strong safeguards in the PAA to prevent it.

My amendment reduces even further any such temptation to resort to reverse targeting by requiring the administration to obtain a regular, individualized FISA warrant whenever the ''real'' target of the surveillance is a person in the United States.

The amendment achieves this objective by requiring the administration to obtain a regular FISA warrant whenever a ''significant purpose of an acquisition is to acquire the communications of a specific person reasonably believed to be located in the United States.'' The current language in the bill provides that a warrant be obtained only when the Government ''seeks to conduct electronic surveillance'' of a person reasonably believed to be located in the United States.

It was far from clear how the operative language ''seeks to'' is to be interpreted. In contrast, the language used in my amendment, ''significant purpose,'' is a term of art that has long been a staple of FISA jurisprudence and thus is well known and readily applied by the agencies, legal practitioners, and the FISA Court. Thus, the Jackson Lee Amendment provides a clearer, more objective, criterion for the administration to follow and the FISA court to enforce to prevent the practice of reverse targeting without a warrant, which all of us can agree should not be permitted.

Mr. Speaker, nothing in the Act or the amendments to the Act should require the Government to obtain a FISA order for every overseas target on the off chance that they might pick up a call into or from the United States. Rather, what should be required, is a FISA order only where there is a particular, known person in the United States at the other end of the foreign target's calls in whom the Government has a significant interest such that a significant purpose of the surveillance has become to acquire that person's communications.

This will usually happen over time and the Government will have the time to get an order while continuing its surveillance. It is the national security interest to require it to obtain an order at that point, so that it can lawfully acquire all of the target person's communications rather than continuing to listen to only some of them.

It is very important to me, and it should be very important to Members of this body that we require what should be required in all cases—a warrant anytime there is surveillance of a United States citizen.

In short, the Senate amendment to the House version makes a good bill even better. For this reason alone, civil libertarians should enthusiastically embrace H.R. 3773.

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

As I wrote in the Politico, ''the best way to win the war on terror is to remain true to our democratic traditions. If it retains its democratic character, no nation and no loose confederation of international villains will defeat the United States in the pursuit of its vital interests.''

Thus, the way forward to victory in the war on terror is for the United States country to redouble its commitment to the Bill of Rights and the democratic values which every American will risk his or her life to defend. It is only by preserving our attachment to these cherished values that America will remain forever the home of the free, the land of the brave, and the country we love.

Mr. Speaker, FISA has served the Nation well for nearly 30 years, placing electronic surveillance inside the United States for foreign intelligence and counterintelligence purposes on a sound legal footing, and I am far from persuaded that it needs to be jettisoned.

However, I know that FISA as it is run currently attempts to circumvent the Bill of Rights and the civil liberties of the American people. I continue to insist upon individual warrants, based on probable cause, when surveillance is directed at people in the United States. The Attorney General must still be required to submit procedures for international surveillance to the Foreign Intelligence Surveillance Court for approval, but the FISA Court should not be allowed to issue a ''basket warrant'' without making individual determinations about foreign surveillance.

In all candor, Mr. Speaker, I must restate my firm conviction that when it comes to the track record of this President's warrantless surveillance programs, there is still not enough on the public record about the nature and effectiveness of those programs, or the trustworthiness of this administration, to indicate that they require a blank check from Congress.

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

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

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

Mr. Speaker, I encourage my colleagues to join me in a vote of support for the FISA Amendments Act, H.R. 3773, as it seeks to balance our Nation's securities and our civil liberties.

Mr. HOEKSTRA. Mr. Speaker, before I close, could the Speaker tell me exactly how much time I have left.

The SPEAKER pro tempore. The gentleman from Michigan (Mr. HOEKSTRA) has 3 minutes remaining; the gentleman from Texas (Mr. SMITH) has 2½ minutes remaining; the gentleman from Michigan (Mr. CONYERS) has 1 minute remaining; and the gentleman from Texas (Mr. REYES) has 1½ minutes remaining.

Mr. HOEKSTRA. Mr. Speaker, I yield myself the balance of my time.

What is this Congress thinking? Some of my colleagues are scaring the American people into believing that the men and women in the intelligence community are spying on them. In reality, our intelligence professionals are focused solely on identifying and stopping the threat from radical jihadists.

What's this Congress thinking? Some of my colleagues want to reward opportunist trial lawyers who are suing the very companies that stood up in America's hour of need. We should recognize what these companies did and protect them from these frivolous lawsuits.

What is this Congress thinking? Some of the key leadership in this House, including this current Speaker, were fully briefed and involved in developing the strategies that were implemented to keep America safe in the aftermath of 9/11. Now some are running from those decisions. They should take responsibility for their actions.

□ 1330

At the funerals last week for the victims of the recent terrorist attack in Jerusalem, Rabbi Shapira delivered a eulogy charging the government with not doing enough to keep Israel safe, for not delivering the strong leadership to face down a deadly enemy. That same enemy wants to attack America.

The 9/11 Commission said, ''Terrorists could acquire without great expense communications devices that were varied, global, instantaneous, complex, and encrypted.''

As Rabbi Shapira last week questioned the leadership of his country, and in light of what the 9/11 Commission told us years ago, I ask the leadership of this House are we doing enough.

Is the 2001 FISA law adequate? The answer has been, and continues to be, a resounding ''no.''

Are we doing enough to protect America, our troops, and our allies, when we go home without finishing this crucial work on intelligence surveillance? Is it acceptable to have our intelligence capabilities continue to erode? Continuing down this path is dangerous.

I hope that when we return, America will not have its own Rabbi Shapira, our own Rabbi Shapira asking, Why did Congress go home without finishing its work? Why didn't the Democratic Congress do better? Why didn't the House recognize the danger and the threat?

We should complete this work today. We should vote on the Senate bill. Why are we going home? Why are we going home with the work unfinished one more time?

With that, I yield back the balance of my time.

Mr. REYES. Mr. Speaker, before I yield the balance of our time, I would like to insert into the RECORD at this point several letters of endorsement for H.R. 3773.

CENTER FOR DEMOCRACY
AND TECHNOLOGY,
Washington, DC, March 12, 2008.

Re Vote ''Yes'' on H.R. 3773, the FISA Amendments Act.

DEAR REPRESENTATIVE: We are writing to urge you to support legislation to amend the Foreign Intelligence Surveillance Act that the House of Representatives will soon consider. The bill, an amendment in the nature of a substitute to H.R. 3773, is a responsible compromise between the House RESTORE Act and the Senate FISA legislation. This compromise includes most of the civil liberties protections in the RESTORE Act while also providing the intelligence agencies the flexibility they need to monitor the international communications of people believed to be abroad. The legislation would replace the Protect America Act (''PAA,'' Pub. L. No. 110–55), which became law in August 2007 and which expired a few weeks ago.

Like the RESTORE Act, the compromise bill permits authorization of surveillance programs targeting persons abroad who may be communicating with people in the United States. The compromise bill makes it clear that the government does not have to make an individualized showing of probable cause for targeting any person reasonably believed to be abroad, unless that person is a U.S. citizen or green card holder. It provides intelligence agencies great flexibility in adding new surveillance targets to existing authorizations. The compromise bill also makes it clear that no order is required for surveillance of foreign-to-foreign communications. The compromise bill includes no blanket immunity from civil liability for telecommunications carriers who assisted with illegal warrantless surveillance from October 2001 through January 17, 2007, but it does allow carriers to defend themselves against those lawsuits while protecting classified information.

Unlike the PAA, the compromise bill includes significant civil liberties protections that merit your support.

Prior Court Approval. Most importantly, the compromise bill requires court approval of surveillance procedures prior to the commencement of surveillance. Except in emergencies, the compromise bill bars the executive branch from commencing surveillance unless the Foreign Intelligence Surveillance Court (''FISA court'') has approved of targeting and minimization procedures designed to protect Americans. The targeting procedures must be reasonably designed to ensure that communications to be acquired will be those of persons reasonably believed to be located outside the United States. The minimization procedures limit the circumstances in which a U.S. citizen or green card holder can be identified when information resulting from intelligence surveillance is disseminated. We are disappointed that under the compromise bill, the authorization for surveillance comes from the Director of National Intelligence (''DNI'') and the Attorney General (''AG''), and not from the FISA court, as would have been provided under the RESTORE Act. While we would have preferred the RESTORE Act approach, surveillance under both bills cannot commence unless the FISA court has first approved the procedures under which it would be conducted.

Court Compliance Assessment. The compromise bill explicitly authorizes the FISA court not only to assess the adequacy of surveillance procedures at the front end, but also to assess whether those procedures are being complied with on a going forward basis. It provides that the court shall assess compliance with the minimization procedures it has approved, and it acknowledges that nothing in the bill prohibits the FISA court from having inherent authority to assess compliance with those procedures and other procedures it has approved. While the extent of the court's inherent authority is unclear, we understand that the Administration has agreed that the court has inherent authority to assess compliance.

Prevention of Reverse Targeting. The compromise bill bars the targeting of a person reasonably believed to be outside the United States for the purpose of targeting a particular, known person reasonably believed to be in the United States. A number of provisions support this bar. They help ensure that surveillance targeted at persons abroad will not be used to circumvent individualized court order requirements that protect Americans from unwarranted surveillance. The bill requires the AG, in consultation with the DNI, to adopt guidelines to ensure compliance with the reverse targeting limitation. Those guidelines must contain criteria for determining whether a ''significant purpose'' of an acquisition is to acquire the communications of a specific, known U.S. citizen or lawful permanent resident reasonably believed to be in the United States. Those criteria must in turn reflect consideration of criteria listed in the bill that tend to show whether a person in the U.S. has become of significant intelligence interest. The guidelines must be submitted to Congress. AG/DNI certifications submitted to the FISA court in connection with authorized surveillance are reviewed by the FISA court for completeness, and must attest that guidelines meeting the reverse targeting limitation have been adopted. The Inspectors General and the AG/DNI both report to Congress on whether the reverse targeting guidelines are being followed.

FISA Exclusivity. The compromise bill takes a significant step toward the goal of clarifying that FISA is the exclusive means of conducting surveillance in the United States for foreign intelligence purposes. It does this by cutting off the argument advanced by the Administration that Congress may implicitly authorize warrantless surveillance when it authorizes the use of force following an attack on the United States, or when it passes other legislation. Under the bill, such authorization would need to be explicit.

Telecom Immunity. Unlike the Senate bill, the compromise bill wisely rejects proposals to grant blanket retroactive immunity to telecommunications carriers that assisted with illegal warrantless surveillance for more than five years following the attacks of September 11, 2001. Telecoms should be immune when they assist surveillance that meets the statutory requirements, and should face civil liability when they assist with requests for assistance with unlawful surveillance. The compromise bill preserves this incentive system, which helps ensure that telecoms prevent unlawful surveillance. In lieu of retroactive immunity, the compromise bill frees telecoms to present in court information tending to show that they complied with the law, even though such information may be subject to the state secrets privilege. It signals the courts that such submissions must be protected from disclosure and should be handled in accordance with the relevant provision of FISA, Section 106(f).

The compromise bill also includes the following significant provisions:

A December 31, 2009 sunset to prompt Congress to reconsider the legislation in a timely manner, and to encourage Executive branch compliance with reporting duties imposed in the legislation and with congressional requests for information;

An Inspectors General audit of post 9–11 warrantless surveillance that may represent the best chance of shedding light on this surveillance, to the extent consistent with national security concerns; and

A requirement for court orders based on probable cause for surveillance of Americans and green card holders who are believed to be abroad, in lieu of the Attorney General certification of probable cause now required by executive order.

For all of these reasons, we encourage you to vote for the compromise bill when it is considered by the House of Representatives. It represents a responsible effort to preserve both liberty and security, and it is legislation the Administration would be wise to support.

For more information, please see our latest policy brief on FISA legislation (http://www.cdt.org/publications/policyposts/2008/3) or contact the Director of CDT's Project on Freedom, Security & Technology, Gregory T. Nojeim, at 202/637–9800 x113.

Sincerely,

LESLIE HARRIS,
President and CEO.
GREGORY T. NOJEIM,
Director, Project on Freedom, Security & Technology.

CENTER FOR NATIONAL
SECURITY STUDIES,
Washington, DC,
MARCH 12, 2008.

Re H.R. 3733 Substitute Amending the Foreign Intelligence Surveillance Act.

Hon. JOHN CONYERS,
Chairman, Judiciary Committee,
Hon. SILVESTRE REYES,
Chairman, Permanent Select Committee on Intelligence, House of Representatives, Washington, DC.

DEAR CHAIRMEN CONYERS AND REYES: We write on behalf of the Center for National Security Studies, which is the only organization whose sole mission is to work to protect civil liberties and human rights in the context of national security issues. For more than thirty years, the Center has worked to find solutions that both respect civil liberties and advance national security interests. The Center advocated for constitutional protections in the Foreign Intelligence Surveillance Act when it was first enacted and has litigated and repeatedly testified against unconstitutional government surveillance since then.

We are writing to outline our views on the substitute bill, which we understand will be brought to the floor for a vote this week.

The new bill (H.R. 3773 substitute) is substantially better than the Protect America Act enacted in August or the bill passed by the Senate last month. The substitute contains strong reporting requirements that will ensure that Congress obtains access to the information needed for public and congressional consideration of what permanent amendments should be made to the FISA. At the same time, the bill would authorize the surveillance of Americans' international communications without a warrant in some circumstances where we believe that the Fourth Amendment requires a warrant. However, the bill contains important protections against such unconstitutional surveillance, many of which were not included in the bill passed by the Senate. Given the votes for that severely flawed bill and the Protect America Act, we welcome this substitute as an important step toward restoring constitutional privacy protections and congressional and public oversight.

A. The new bill contains important provisions to establish accountability for the illegal surveillance by this administration as well as guarantees for future oversight. In particular, and unlike the bill passed by the Senate, it contains:

1. A December 2009 sunset so a new Congress will revisit these temporary powers;

2. A required Inspector General audit of all warrantless electronic surveillance and a public report, which will ensure that information about past programs is preserved and reviewed;

3. Better congressional reporting requirements about future surveillance;

4. Creation of a commission appointed by Congress with subpoena power to investigate and report to the American people about the Administration's warrantless surveillance; and

5. No retroactive immunity for the telecommunications carriers that carried out the warrantless surveillance of Americans' communications.

We applaud your efforts to require an accounting of the administration's past illegal surveillance of Americans. The Inspector General audit, the commission, and the other congressional and public reporting requirements would lay the groundwork for the next administration and the next Congress to gain a full understanding of this administration's illegal surveillance, its underlying interpretations of applicable laws, and the impact of any changes to FISA this year. This bill would help ensure that more information, not just the administration's rhetoric and selective disclosures, are made available to Congress, and will give Congress and the American people the opportunity to assess surveillance procedures on the basis of a complete record in 2009. In this connection, we applaud your commitment to revisiting in advance of that sunset date what the substantive standards and procedures for surveillance of Americans should be in order to better protect Americans' constitutional rights and ensure effective national security measures.

B. The bill also contains stronger judicial review procedures than does the Senate bill.

1. It does not contain the rewrite of the definition of ''electronic surveillance'' contained in the Senate bill, which would have weakened even further the FISA's protections for the rights of people in the U.S.

2. It requires judicial review in advance of surveillance except in emergencies.

3. It contains specific protections from the RESTORE Act for Americans' international communications.

4. It requires a court order based on probable cause to target Americans who are overseas. (This requirement is also in the Senate bill.)

5. The bill also reinforces that surveillance must be conducted within the requirements of the FISA or federal criminal law and not at the President's say-so.

In sum, the bill provides many more protections than any proposal the administration has helped draft on these issues, including the bill passed by the Senate last month.

Thank you for your consideration of our views.

Sincerely,

KATE MARTIN,
Director.
LISA GRAVES,
Deputy Director.

MARCH 12, 2008.

GROUPS URGE FURTHER INVESTIGATION OF TELECOM'S ACTIONS BEFORE ANY VOTE ON RETROACTIVE IMMUNITY

DEAR MEMBER OF CONGRESS: Our thirty-four organizations write to support the March 6 Dear Colleague letter on telecom immunity legislation from House Energy and Commerce Committee Chairman John Dingell, Subcommittee on Telecommunications and the Internet Chairman Edward Markey, and Subcommittee on Oversight and Investigations Chairman Bart Stupak. These respective Chairs urged Congress to uphold its duty to make an informed decision by first learning and evaluating ''all the facts'' prior to any vote on immunity. They specifically referenced a whistleblowing disclosure from Mr. Babak Pasdar whose affidavit was distributed last week to all House offices. We ask the House to support the chairmen and not grant retroactive immunity as part of any bill to amend the Foreign Intelligence Surveillance Act.

The Dear Colleague letter summarized a threat to privacy rights that is the bottom line in Mr. Pasdar's affidavit: That an unnamed major wireless telecommunications carrier may have given the government unmonitored access to data communications from that company's mobile devices, including e-mail, text messages, and Internet use.

Mr. Pasdar's statement describes a mysterious ''Quantico Circuit'' with apparently unfettered access to this carrier's mobile device data network as well as its core business network, which includes billing records and fraud-detection information. The other end of that Quantico Circuit may have had capabilities to physically track the whereabouts of innocent subscribers and monitor communications and other personal, behavioral habits. Yet, according to Mr. Pasdar, the line was configured so that the carrier could have no record of what information had been transmitted. Of equal concern was his allegation that there was no security to protect this line—an unheard of vulnerability in a carrier environment.

Mr. Dingell, Mr. Markey, and Mr. Stupak are right. Mr. Pasdar's concerns are strikingly similar to those raised by another whistleblower, Mr. Mark Klein from AT&T. Their combined disclosures raise grave questions. For example, who was at the other end of the Quantico Circuit, and what information have they been obtaining? Does such access comport with long-standing federal law? Is the circuit legal? Is its apparent lack of security legal or wise? How long has it been in operation? Who paid for construction and operation of the Quantico Circuit? Was the telecom paid by its recipients for using the circuit? What were the terms?

You must get answers to these questions to make an informed decision about what the Senate's broad retroactive telecom immunity provision would sweep in. Congress should schedule hearings and exercise any other investigative authority necessary to determine the truth about our privacy and telecom companies—before Congress votes on any bill that would give amnesty to these companies.

We urge you not to retreat on the immunity issue in the face of Administration scare tactics. A rush to judgment would not improve national security, and would unnecessarily jeopardize our rights to privacy. Four experts and former aides to the current Director of National Intelligence explained last week that alternate authority exists under current law to continue ongoing surveillance for up to a year, as well as to obtain new approvals as needed. No special immunity is needed, as the FISA court can order telecoms to cooperate with lawful foreign intelligence surveillance.

If Messrs. Pasdar and Klein are telling the truth, they have described the tip of an iceberg. Congress must find out what is underneath. Accordingly, we urge you to investigate these matters fully and not grant retroactive immunity in the meantime.

Sincerely,

Christopher Finan, President, American Booksellers Foundation for Free Expression; Nancy Talanian, Director, Bill of Rights Defense Committee; Chief Gary Harrison, Chickaloon Village, Alaska; Lyn Hurwich, President, Circumpolar Conservation Union; Jesselyn Radack, Coalition for Civil Rights and Democratic Liberties; Matthew Fogg, Congress Against Racism and Corruption in Law Enforcement (CARCLE); Ben Smilowitz, Disaster Accountability Project; Dr. Jim Murtagh, Doctors for Open Government (DFOG); Jim Babka, President, DownsizeDC.org, Inc.; John Richard, Director, Essential Information.

George Anderson, Ethics in Government Group, (EGG); Mike Stollenwerk, Fairfax County Privacy Council; Steven Aftergood, Project Director, Federation of American Scientists; Conrad Martin, Executive Director, Fund for Constitutional Government; Gwen Marshall, Co-chairman, Georgians for Open Government; Tom Devine, Legal Director, Government Accountability Project; James C. Turner, Executive Director, HALT, Inc.—An Organization of Americans for Legal Reform; Helen Salisbury, MD, Health Integrity Project; Scott Armstrong, President, Information Trust; Michael Ostrolenk, National Director, Liberty Coalition.

Dr. Janet Chandler, Co-Director, TAF Mentoring Project; Joan E. Bertin, Esq., Executive Director, National Coalition Against Censorship; Zena D. Crenshaw, Executive Director, National Judicial Conduct and Disability Law Project, Inc.; Mike Kohn, General Counsel, National Whistleblower Center; Ron Marshall, Chairman, The New Grady Coalition; Sean Moulton, Director, Federal Information Policy OMB Watch; Patrice McDermott, Director, OpenTheGovernment.org; Darlene Fitzgerald, Patrick Henry Center; David Arkush, Director, Congress Watch Public Citizen; John W. Whitehead, President, Rutherford Institute; Daphne Wysham, Director, Sustainable Energy and Economy Network; Kevin Kuritzky, The Student Health Integrity Project (SHIP); Jeb White, President, and C.E.O., Taxpayers Against Fraud; Dane von Breichenruchardt, President U.S. Bill of Rights Foundation; Linda Lewis, USDA Homeland Security Specialist (retired).

Mr. Speaker, I now yield the remaining time to the gentleman from Massachusetts (Mr. TIERNEY), a valued and distinguished member of the Intelligence Committee.

Mr. TIERNEY. Mr. Speaker, over history, and particularly since 1970, we have been able to find balance of getting the necessary intelligence collection and also having the protection of our liberties and our constitutional rights; through wars, in fact through the Cold War, which are much more severe existential threats than we see today, to a Cold War where we had nuclear powers that we thought were ready to attack us. We didn't know when and we didn't know to what degree. We never found it necessary to totally abdicate our constitutional rights and privileges. It is unnecessary for us to do that. It is shameful that some think that now is an opportunity for us to do that.

The legislation before us today allows us to, in timely ways, collect all of the intelligence we need. It allows us to do it before a court order in cases of emergency. It allows us to do it without delay. It allows us to have provisions for oversight. It allows us to do everything to protect this country and it protects our civil liberties.

We have a situation with phone companies now wanting immunity. They've always had immunity. The question is did they go for it. Did they have a court order or did they have the proper certification? Why won't the White House let all Members of Congress see that? It would answer the questions if they saw the documents.

All Members of Congress should see the Presidential order and discuss whether the breadth and scope was so breathtaking that they would rush to make sure that courts intervene to make sure we had the constitutional protections there and make sure that we saw the memos that were there for legal justification and whether or not they weren't farcical in some respects and make sure that we saw what went on between the companies and the administration.

If the companies think that they have reason to believe that, despite the fact that they didn't take advantage of their immunity provisions, they still have a claim of defense, we've provided a way for them to go to court so they can make that case. Going forward, they have immunity and a way to protect themselves in the past.

Let's get over the nonsense and pass this law.

Mr. SMITH of Texas. Mr. Speaker, I yield the balance of my time to the gentleman from California (Mr. DANIEL E. LUNGREN), a member of the Judiciary Committee and a member of the Homeland Security Committee.

Mr. DANIEL E. LUNGREN of California. Mr. Speaker, oftentimes what is said on this floor reveals the differences between the two parties or the difference between the two approaches. The gentleman who just spoke before me made an allegation about the breathtaking and overwhelming nature of the President's request for information. Frankly, I thought what was at stake at the time was the breathtaking and overwhelming threat that this Nation faced after 9/11. That's what the President was responding to. That's what the President utilized in his request of American companies that come to the aid of their country. And here we stand saying we cannot reward them except to give them lawsuits.

The gentleman from Texas (Mr. REYES) says if the companies are innocent, as if there is some question. I sat through all of those briefings. There is, in my judgment, not one iota of evidence that the companies acted inappropriately whatsoever. Not one iota of evidence sitting there after question after question after question; yet, on this floor, we raised the very question of those companies by saying if they are innocent. And what does Mr. REYES say? If they are innocent, then it will be decided the good old American way: Go to court.

Well, I'm a lawyer, but I don't think most Americans think the American way in every instance is to go to court. If you look at the legislation we have before us, it is rewarding the Good Samaritans with a lawsuit.

There is a fig leaf here, yes. Now the majority side says, You know, there is a problem that we have to address with respect to telecommunications companies. That's progress, because when we were arguing on the floor with your previous provisions, you didn't even admit that. Now you do it, and now you say we are going to take care of it by the State's secrets doctrine and by going to a secret court proceeding.

It is a fig leaf to allow Members to vote for a bill you know is never going to become law. It is not effective. How do I know? Twenty-five attorneys general of the United States say it doesn't work. They say support the provision that's contained in the Senate bill. Democrats and Republicans alike from Texas, from North Carolina, from Oklahoma, from Florida, from Alabama, Arkansas, Alaska, Colorado, Georgia, Idaho, Indiana, Kansas, Maryland, Michigan, Nebraska, New Hampshire, North Dakota, Rhode Island, South Dakota, Virginia, West Virginia, Washington, Utah, South Carolina, and Pennsylvania.

No, Mr. Speaker, the President is not wrong. No, Mr. Speaker, he is not doing this to protect himself. He's doing it as these attorneys general of the United States recognize to allow us to go forward in protecting the American people.

Don't harm these telecommunications companies with friendly fire.

Mr. CONYERS. Mr. Speaker, it's my privilege to yield the balance of our time to the majority leader, STENY HOYER, whose legal expertise has held him in good stead over the months that we've worked on the Foreign Intelligence Surveillance Act.

Mr. HOYER. Mr. Speaker, this is indeed an important day for our country, for the House of Representatives, and for the American people. An important day because we focus on the protection that we owe to our people and to our country, not only from terrorists but from those who would undermine the Constitution of the United States.

Let me just briefly put in context where we are today some 7 years and 2 months after the start of this administration. From 2001 to 2006, the President of the United States did not veto a single bill. Why did he not veto a single bill? Because the Congress would not send him a bill that he did not want sent to him. It was a complacent, complicit Congress. And as a result of that complacency of the representatives of the American people, the administration came to believe that it could do anything it wanted without oversight or accountability.

And because of that, when we were put at risk by 9/11, the administration's response, perhaps led by the Vice President, was that we do not need to follow the law. There was a law in place. It's still in place. It still provides for the protection of the American people. It's called the Foreign Surveillance Intelligence Act. But as too often has been the case in this administration, they chose not to follow the law. They chose, instead, to follow their own predilections. And that's why we are here today.

In addition to that, we were in a condition where technology had changed. The administration was absolutely correct on that point. And both the Intelligence Committee in the Senate and the Intelligence Committee in the House knew they had to respond to that. As a matter of fact, Mr. HOEKSTRA and Ms. HARMAN, as the chairman and ranking member, and Mr. Goss prior to that, knew that we had to move towards that. That is now a result of the legislation we see before us.

My good friend and distinguished colleague, the former attorney general of the State of California who's been in this body for some years. He was here,

then he went back to California. He read from the letter of the attorneys general. One of them was Maryland. I talked to him yesterday.

Sometimes people put letters in front of us that are not accurate and we don't check all of the facts. I presume that the other attorneys general that were presented with this letter are in the same position.

Let me read from this letter: ''Senate Intelligence Committee Chairman John D. Rockefeller authored S. 2248 to solve a critical problem that arose when the Protect America Act was allowed to lapse on February 16, 2008.'' Hopefully, everybody in this body knows that information is inaccurate. Senator ROCKEFELLER started to draft his legislation, and the Senate Intelligence Committee, long before February of 2008, the House Intelligence Committee and the House Judiciary Committee and Senate Judiciary Committee, long before that ever happened. That information is inaccurate. I don't hold the attorneys general personally responsible for that inaccuracy. But I will tell you, my own attorney general, a signatory on this letter, had been misinformed. That's unfortunate.

I presume by the association, the overwhelming majority of these attorneys general are Republicans, but I don't think it was a partisan letter, per se, but it is shocking to me that an attorney general of a State in this country would say, ''whatever action is necessary to keep our citizens safe.'' There have been those down through history who, when we have been at risk, have said whatever action we take is justified, and the Constitution has suffered in that process.

We have a responsibility to do both, not just one. The attorneys general in their letter also said this: ''Intelligence officials must obtain FISA warrants every time they attempt to monitor suspected terrorists in overseas countries.'' That is categorically false. I do not believe that any one of the attorneys general that signed this letter believed it to be false, but it is wrong. They are misinformed.

We have an opportunity today to move this process forward to protect America and protect our Constitution. Senator ROCKEFELLER, the chairman of the Senate Foreign Intelligence Committee, a committee from the Senate, passed a bipartisan bill. And I am so interested to hear all of the Members on the Republican side talk about how a Senate, bipartisan-passed bill ought to pass this House.

My, my, my. If Congressman DeLay were here now, he would turn over in his seat. His premise was the Senate doggone well ought to pass House bills and not ask any questions. That was his position. He had no intent to pass, no matter how bipartisan a Senate bill was, Tom DeLay had no use for talking to Senate Republicans about what he ought to pass.

And by the way, if the President said pass it, if it was the Patients' Bill of Rights that he didn't want and it passed the Senate and the House, it didn't pass out of the conference committee because the President didn't want it. And by the way, on the prescription drug bill that a large number of your caucus was against, you passed anyway. It took you 3 hours to vote it, but you passed it. And so many of your Members came kicking and screaming to the final result and lament that vote this very day, and all of you on that side of the aisle know it. Not all of you, but a large number.

Our responsibility is not to take a Senate bill or a House bill at face value. It is to exercise our best judgment to serve the American people as best we can.

□ 1345

I will close with this: Senator ROCKEFELLER, the chairman of the committee, strong proponent of the bipartisan bill, said this on March 11, 2008, just a few days ago:

''Today's House proposal reflects progress in bringing the two bills together, and it is a step in the right direction.'' He concluded his statement by saying this: ''As soon as the House sends us this new bill, we will once again roll up our sleeves and get back to work on a final compromise that the House, the Senate, and the White House can support.''

Ladies and gentlemen of this House, that's what the Founding Fathers had in mind when they created the House of Representatives and the United States Senate and they gave to the President of the United States a role in the legislative process. We have an opportunity today to serve the protection of our country, the interception of communications dangerous to our people, and to uphold our oath to preserve and protect the Constitution of the United States. Let us take that opportunity.

Mr. VAN HOLLEN. Mr. Speaker, I rise in support of H.R. 3773. This bill reestablishes the role of the Court into foreign surveillance if and when a U.S. person becomes a target of such surveillance. H.R. 3773 also authorizes the FISA court to review the ''minimization'' procedures used by intelligence agencies regarding the use of material that has been inadvertently intercepted. Moreover, this bill authorizes the FISA court to also review the ''targeting'' procedures that involve U.S. persons. Finally, the bill creates a commission to review the President's previous warrantless surveillance program and to report to Congress. It is important to note that H.R. 3773 contains no retroactive immunity for the telephone companies for their past accommodation to intercept the communications of U.S. persons without a court order.

After the terrorist attack on September 11, 2001, our security agencies worked to improve their intelligence operations to ensure that such a plot could never again be executed on U.S. soil. However, this Administration, rather than assessing the need to make adjustments to surveillance authorities, embarked upon an unauthorized secret program authorized by nothing more than Executive fiat and clearly outside of the Foreign Intelligence Surveillance Act, FISA. The telecommunication industry was directed to comply with demands of the Administration with or without the requisite authority. Some telecommunications companies complied some did not.

Despite repeated requests from Democratic Members of Congress for the Administration to assess the limitations of the existing FISA law and to request necessary changes, the Administration refused to do so. Only after James Risen in 2006 exposed the fact that the Administration had been engaged in a massive domestic spying operation did the Administration begin to address the need to reconcile the program with some semblance of statutory authority. To that end, last summer the Administration identified a change in technology that warranted a change to the law. The change in the telecommunications industry has placed nodes and other technological backbones on U.S. soil regardless of the flow of information. Consequently, many foreign-to-foreign communications pass through the U.S. without involving U.S. persons. This technological ''touch down'' under existing law would require a court order and needed to be changed.

From that request for a technical change, the Administration, with the assistance of the Republicans in Congress, launched an initiative to virtually remove court orders for the surveillance of American persons. Moreover, the Administration launched an additional initiative to provide blanket retroactive immunity for all the phone companies and ISPs that intercepted communications in the absence of a legal authorization. This immunity was demanded without the disclosure of the acts that would be subject to such immunization. Currently, there are almost 40 lawsuits pending that have challenged the legality of the President's unauthorized surveillance program.

All of these past cynical efforts to engage in an illicit surveillance program have now transformed into a campaign to engage in a widespread cover-up of past illegalities. The Republicans and the President cloak their surreptitious activity in a cloak of national security. However, the American people know better. We all want to stop terrorism. We all agree that foreign-to-foreign communications should be intercepted without needing a court order. We all agree that merely because such a communication is transported through a device that sits on U.S. soil, it should not impose any impediment to the surveillance of these communications. Where we disagree is in the need to carry on an illegal program, to defy any accountability and then come to Congress to seek legislation that is purely designed to conceal wrongdoing.

The bill before us today accomplishes the following:

Provides for surveillance of terrorist and other targets overseas who may be communicating with Americans.

Requires the FISA court to approve targeting and minimization procedures—to ensure that Americans are not targeted and that their inadvertently intercepted communications are not disseminated. These procedures must be approved prior to surveillance beginning—except in an emergency, in which case the government may begin surveillance immediately, and the procedures must be approved by the court within 30 days. (This may be extended if the court determines it needs more time to decide the matter.)

Provides prospective liability protection for telecommunications companies that provide lawful assistance to the government.

Requires a court order based on probable cause to conduct surveillance targeted at Americans, whether inside the United States or abroad.

Requires an Inspector General report on the President's warrantless surveillance program.

Prohibits ''reverse targeting'' of Americans.

Explicitly establishes FISA Exclusivity—that FISA is the exclusive way to conduct foreign intelligence surveillance inside the U.S. Any other means requires an express statutory authorization.

Sunsets these authorities on December 31, 2009 (same as the PATRIOT Act sunset).

Moreover, this bill is as important for what it does not contain, i.e. retroactive immunity. This bill does provide telecom companies a way to present their defenses in secure proceedings in district court without the Administration using ''state secrets'' to block those defenses. Finally, this bill also establishes a bipartisan, National Commission—with subpoena power—to investigate and report to the American people on the Administration's warrantless surveillance activities, and to recommend procedures and protections for the future.

We all want to prevent the acts of terrorism. However, some of us believe that we can protect our Nation without throwing away all of the rules that have been designed to protect the Constitutional rights of Americans. The scare tactics that have been used by this Administration to further cloak their illegal programs are reprehensible. What is more is that these tactics are not even marginally credible.

The President's national security programs by and large have been a failure, his misadventure into Iraq on a quest for nonexistent weapons of mass destruction have led us on a path of a substantial loss of life, resources and moral standing in the world. Moreover, it has diverted our attention from those who did attack us on 9/11, Al-Qaeda and its Taliban allies who are regrouping and strengthening, according to declassified U.S. intelligence estimates, along the Afghanistan-Pakistan border. In addition, the President's authorization to use torture on U.S. soil, as well as outsourcing it to foreign countries, by way of rendition, has compromised the security of our troops and diplomatic corps around the world. These practices have done much more to compromise our national security than to protect it. For these reasons, the President is not in a position to invoke national security on any grounds and certainly not to justify a warrantless domestic spying program and retroactive immunity for those who were complicit in this activity.

Mr. BLUMENAUER. Mr. Speaker, over the past few months, we've had a lot of back and forth on this issue. For those who have been at the table, I want to express my appreciation for your hard work and the quality of your debate. I am proud of the fortitude displayed by the Speaker and the Intelligence Committee during this process: There will be no blanket immunity for telecom companies, there will be a two-year sunset, and there will be a commission to thoroughly investigate this administration's shameful wiretapping program.

For the past seven years I have been highly critical of Republican wiretapping legislation. I have voted against past efforts to expand the ability of this administration to intrude in the lives and privacy of innocent citizens. Most recently, I supported the expiration of the Protect America Act because I am confident that the dedicated members of the intelligence community do not need to violate the rights of Americans in order to protect them.

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

Ms. MATSUI. Mr. Speaker, liberty and security are not mutually exclusive. Quite the opposite; they go hand in hand.

The FISA Amendments Act recognizes this reality. This legislation is a balanced compromise that protects our country and ensures that our basic American freedoms remain intact.

Our great country is founded on civil liberties, and secured by our intelligence community.

Much of what keeps us safe is our commitment to upholding the values of freedom and liberty.

All the security in the world is meaningless if we fail to protect the values that make our country worth defending in the first place.

If we surrender the basic principles that make us who we are, we will forever change what it means to be American.

Mr. Speaker, I know what can happen when we abandon our core American values. I was born in an internment camp, and my own family suffered the consequences when our country succumbed to the rhetoric of fear.

That was a dark time in our Nation's history—one we cannot afford to repeat.

That is why the legislation before us today is so important.

It protects the liberties that we cherish, liberties that are the birthright of every American citizen.

At the same time, it recognizes the need for the surveillance of our enemies.

It gives our intelligence agencies the tools necessary to keep us safe, and provides strong legal clarity for the intelligence community.

The compromise solution we have negotiated also allows telecommunications companies to defend themselves in a court of law.

It takes Congress out of the equation and puts legal decisions back where they belong: in the court system.

I am confident that this process will result in a fair solution to the civil cases that have been brought against these companies.

That is why this balanced legislation deserves the support of every Member of this House.

This bill will keep us safe, and it will keep us free.

I urge passage of the FISA Amendments Act of 2008,

Mr. MOORE of Kansas. Mr. Speaker, I rise today to express my cautious support for this House amendment to the Senate-approved version of H.R. 3773, the FISA Amendments Act of 2008. I extend my gratitude for the hard work that Chairmen CONYERS and REYES have put into this legislation, as well as Speaker PELOSI and Majority Leader HOYER for their efforts to negotiate with the Senate to work out the differences between the different approaches to update the Foreign Intelligence Surveillance Act [FISA] of 1978.

We will never forget the awful terrorist attacks of September 11, 2001, on our country. And we must keep in mind there are still those who wish to do us harm as we authorize essential surveillance authorities balanced by the civil liberty protections ensured by our Constitution. It is disappointing that the Bush Administration and our Republican colleagues have refused to participate in negotiations to date, but I am hopeful that with this new bill approved by the House, we can quickly work out our honest differences to provide our intelligence and law enforcement agencies with the tools required to monitor potential agents with terrorist intentions against the United States.

This bill is a step in the right direction, but I have serious reservations with certain provisions that I urge Congress to promptly resolve in the coming weeks. I strongly believe in the merits of the Senate-approved FISA legislation drafted by Chairman ROCKEFELLER and Ranking Member BOND, and I support a final bill that includes the following provisions: Require individualized warrants for surveillance of U.S. citizens living or traveling abroad; clarify no court order is required to conduct surveillance of foreign-to-foreign communications that are routed through the United States; provide enhanced oversight by Congress of surveillance laws and procedures; compel compliance by private sector partners; review by FISA Court of minimization procedures; and targeted immunity for carriers that allegedly participated in anti-terrorism surveillance programs.

As a District Attorney for 12 years, I understand the importance of cooperation with private-sector partners in law enforcement matters. Without their cooperation in times of emergency, the community I was sworn to protect would be less safe and secure. The National Sheriffs' Association, the International Association of Chiefs of Police, the Fraternal Order of Police and the National Troopers Coalition have all expressed their support for the targeted immunity that the Rockefeller-Bond FISA bill would provide. Key members of the 9/11 Commission have also voiced their support for the Rockefeller-Bond FISA bill. 9/11 Commission Co-Chair and former Congressman Lee Hamilton wrote that: ''To the extent that companies helped the government, they were acting out of a sense of patriotic duty and in the belief that their actions were legal. Dragging them through litigation would set a bad precedent. It would deter companies and private citizens from helping in future emergencies. . . .'' 9/11 Commissioner and former Senator Bob Kerrey affirmed that sentiment when he stated: ''We wrote in the 9/11 Commission report that 'unity of purpose and unity of effort are the way that we will defeat this enemy and make America safer for our children and our grandchildren.' We cannot hope to achieve such unity of effort if on the one hand we call upon private industry to aid us in this fight, and on the other allow them to be sued for their good-faith efforts to help.''

I agree with the 21 state attorneys general who wrote in a December 11, 2007, letter to Senate leadership: ''The provisions of [Rockefeller-Bond] are consistent with existing, longstanding law and policy. Congress has long

provided legal immunity for carriers when, in reliance on government assurances of legality or otherwise in good faith, they cooperate with law enforcement and intelligence agencies . . . provisions of S. 2248 would . . . establish a thoughtful, multi-step process involving independent review by the Attorney General and the courts that, only when completed, would lead to dismissal of the claims.''

Congress must continue the hard work of negotiating a suitable compromise that equips our intelligence agents with the tools they need to protect our country, while ensuring that our civil liberties—which make us the greatest nation in the world—remain protected.

Mr. DINGELL. Mr. Speaker, I voted against the original Patriot Act, I voted against the reauthorization of the Patriot Act in 2005, I voted against the President's Protect America Act that was signed into law last August, and I remain prepared to vote against any legislation that does not adequately protect our constitutionally guaranteed civil rights. I have some concerns about this legislation. I don't believe it is perfect. However, I am prepared to vote in support of it today as a sign that we in the House are prepared to negotiate a bipartisan solution that will end the deadlock on this issue.

I note that the President has already rejected this overture, and once again insisted that he will veto any bill that does not grant blanket amnesty to the telecommunications companies that are alleged to have assisted the Bush Administration in conducting illegal warrantless wiretap programs. It is unfortunate that the President has taken this position, but I can assure him that there are those of us who will not be moved by his intransigence.

I have repeatedly asked the Bush Administration to provide me with a briefing about the warrantless wiretap programs that took place without Congressional authorization so I could determine for myself whether amnesty is justified, and these requests have been repeatedly denied. After seven years of lies and obfuscation, I refuse to take the President at his word that amnesty for telecommunications companies is in the best interest of the American people, and I refuse to vote for amnesty until I am given the opportunity to review the evidence supporting it.

Mr. NADLER. Mr. Speaker, I rise in strong support of H.R. 3773, the FISA Amendments Act. This carefully crafted legislation gives our intelligence agencies all the tools they need to protect our country, while protecting our fundamental civil liberties.

Mr. Speaker, let us be clear about what this legislation does not do. It does not require individual warrants for the targeting of foreign terrorists located outside the United States. For three decades, that has been the law, and it will still be the law under this bill. There is no dispute about this.

The bill starts with the recognition that the intelligence community needs to surveil all members of a terrorist group—once that group is identified. Any suggestion that it requires individualized warrants to intercept communications of terrorists overseas is wrong.

The bill maintains the traditional requirement of a warrant when our intelligence agencies seek to conduct surveillance on Americans. And because some foreign surveillance may record conversations with Americans, the bill requires that, when the Government proposes to undertake surveillance of a foreign group or entity, it must first apply to the FISA court, except that, in an emergency, the surveillance can begin immediately, and the court can consider the surveillance procedures later.

In both this bill and the Senate bill, the Government has to inform the court of the procedures it will use to ensure that it is targeting only foreigners overseas and how it will ''minimize'' domestic information it might inadvertently pick up. The only real difference is that the Senate bill lets them listen first, then go to the court within 5 days. This bill requires that they go to the FISA Court first. But in an emergency, we give them 7 days to listen before they go to the court. So will someone please tell me how this minor difference between the bills somehow gives rights to terrorists?

There is one thing that this bill does not do, and this great body must not do—provide blanket, retroactive immunity to the telecommunication companies that assisted in the President's warrantless wiretapping program. Such a move would fly in the face of our notions of justice.

Mr. Speaker, in the last few weeks, we have heard countless assertions from our colleagues on the other side that are false and misleading. They claim that we allowed the Protect America Act to expire—when it was the Republicans who blocked attempts to extend that legislation temporarily. And they continue to claim that retroactive immunity for the telecom companies is necessary for the security of the country. But they have failed to provide any evidence for that claim.

The telecom companies aided the Administration's surveillance program. Some people—American citizens—believe their constitutional rights were violated, and brought suit against the government and the telecom companies. There are two narratives here. One is that the telecom companies patriotically aided the Administration in protecting Americans from terrorists. The other is that the telecom companies conspired with a lawless Administration to violate the Constitutional rights of Americans. Which of these narratives is correct is for a court to decide.

It is not the role of Congress to decide legal cases between private parties. That is why we have courts. If the claims are not meritorious, the courts will throw them out. But if the claims do have merit, we have no right to dismiss them without even reviewing the evidence.

We are told that the telecom companies should not be subject to lawsuits for doing their duty. But whether they were doing their duty, or abusing the rights of Americans, is precisely the issue. And that is a legal issue for the courts to decide.

In any event, the existing law, in a wise balance of national security and constitutional rights that this bill does not change, already provides absolute immunity to the telecom companies if their help was requested, and if they were given a statement by the Attorney General, or various other government officials, stating that the requested help did not require a warrant or court order and would not break the law. They have immunity whether those statements were true or not. They can rely absolutely on the government's assertions.

So why do they think they need retroactive immunity? Because of the Administration's sweeping assertion of the ''state secrets'' doctrine, which has prevented the companies from claiming their immunity.

Title II of this bill will allow the telecoms to show the courts, in a secure setting, if they were obeying the law or if they weren't. It will allow the telecom companies to assert their immunity in court, and to present the relevant documents and evidence to the court in a secret session that protects any ''state secrets.'' The courts can then judge whether the telecom company obeyed the law—in which case it has complete immunity—or whether it did not. And, I remind you, that ''following the law'' means simply obtaining a statement from the government that the company's help is needed, and that the requested help does not require a court order or violate the law. A company that assisted in spying on its customers without getting that simple assurance does not deserve immunity.

Mr. Speaker, this bill gives our intelligence agencies what they say they need. But it also demands that their extraordinary powers be used properly, and that they follow our laws and our Constitution. This bill will help limit this Administration's disregard for the rule of law. It is a carefully crafted measure, and deserves the support of every member in this body.

Mr. UDALL of New Mexico. Mr. Speaker, for the past several months, Congress has debated one of the most important issues that we face: the struggle to protect America while preserving the guaranteed liberties that make America great. During this vital discussion, some argued that Congress should stop deliberating and pass a reckless proposal that would unnecessarily sacrifice our constitutional rights. I disagreed. The legislation we discuss today, which was the product of deep deliberation and compromise, will keep America both safe and free. It is a credit to this House and to the American people.

Today's legislation contains a number of carefully crafted provisions intended to protect the civil liberties of Americans at home and abroad while ensuring that the intelligence community can do its job. The wisest decision the House made in this bill was to grant telecommunications companies an opportunity to defend themselves in a confidential FISA court trial. This is in stark contrast to the administration's attempt to provide retroactive immunity for telecommunications companies that may have violated the law. The Bush administration claims that the telecommunications companies have evidence that would exonerate them but cannot be revealed in court because of confidentiality concerns. Our bill ensures that the American people will get their day in court and the companies will have the chance to defend their actions. This compromise is fair to the companies and to those whose rights they may have violated.

I believe we can protect our Nation while upholding the values that make America a beacon of hope to people around the world. America is strong because we are a nation of freedom and a nation of laws. By refusing to grant blanket immunity to those who violated Americans' rights, the House reaffirms the rule of law and the importance of liberty. The Senate should follow our lead.

Mr. KUCINICH. Mr. Speaker, I rise today in opposition to the FISA Amendments Act of 2008.

This legislation is a commendable improvement over the irresponsible Protect America

Act passed by this body in August. I am thankful that this new bill does not include retroactive immunity for telecommunication companies. However, the bill still falls short of ensuring the protection of the fourth amendment rights of U.S. citizens.

Blanket warrants, institutionalized by the Protect America Act, will continue with the enactment of the FISA Amendments Act. There is a legitimate concern that surveillance of persons abroad can potentially infringe on the fourth amendment rights of U.S. citizens.

These blanket wiretaps make it impossible to know whose calls are being intercepted by the National Security Agency, which increase the likelihood that the civil liberties of innocent U.S. citizens will be violated.

Specifically, in Section 101(702)(i) appears to include a review process of ''Certifications and Procedures'' but these procedures are of a broad nature, make no connection to specific individuals, provide for no showing of wrongdoing and contain no explanation of how collection procedures will actually work. Consequently, the bill fails to uphold standard fourth amendment judicial involvement.

Section 101 (702)(g)(3) states that ''a certification made under this subsection is not required to identify the specific facilities, places, premises, or property at which the acquisition authorized under subsection (a) will be directed or conducted.''

Our county's fourth amendment provides that targets of search and seizure should be stated with particularity. The particularity requirement limits the scope of the search by assuring U.S. citizens whose property is subject to a search is, according to the Congressional Research Service, ''being searched of the lawful authority of the executing officer and of the limits of his power to search. It follows, therefore, that the warrant itself must describe with particularity the items to be seized, or that such itemization must appear in documents incorporated by reference in the warrant and actually shown to the person whose property is to be searched.''

Under current law, reviews conducted by the FISA court do not receive names of targets or organizations which already places some limitation on particularity. But this bill appears to allow the Government to go even further by applying for very broad, year-long authority to issue directives to companies to comply with Government searches as they see fit. This broad authority is reminiscent of the current administration's secret spying program.

Furthermore, Section 101(702)(g)(2)(v) states that a requirement of certification for the targeting of certain persons outside of the United States is that ''a significant purpose of the acquisition is to obtain foreign intelligence information.'' FISA warrants already have a lower threshold of ''probable cause'' than criminal ''probable cause'' because the targets are assumed to be terrorist. The language in this section of the bill eliminates the need to find any wrongdoing whatsoever. Because, in the words of the Congressional Research Service, ''[t]he concept of ''probable cause'' is central to the meaning of the warrant clause'' of the fourth amendment, there are grave concerns about the erosion of our civil liberties.

In sum total, allowing the administration to run a surveillance program of such a broad and undefined nature qualifies as ''unreasonable'' under the fourth amendment. Although the purpose of the bill is to target foreigners abroad, by picking up calls coming into and out of the U.S., the program is not targeted at individual terrorists and individualized court orders are not required. The bill ensures that all targeted international communications are not covered by the fourth amendment even if a U.S. citizen is involved. The rights guaranteed by the fourth amendment dictate that the Government must have cause to spy on U.S. citizens. But the language in this bill ensures that the Government can spy on U.S. citizens who participate in international communications if there is no cause. If we permit our constitutional rights to be watered down out of fear, we have given up our democracy. Congress must stand firm and defend the Constitution.

Mr. BUTTERFIELD. Mr. Speaker, I rise today to speak on the FISA Amendments Act. The most controversial element of this legislation is the absence of retroactive immunity for telecommunications companies. As we continue this debate, I urge my colleagues to consider the unique circumstances telecommunications companies faced after the events of 9/11. I believe that their cooperation with the government was undertaken in good faith and with an objectively reasonable belief that such assistance was lawful. I applaud this legislation, but urge careful consideration of the issue of retroactive immunity.

Mr. UDALL of Colorado. Mr. Speaker, I support this measure for two reasons.

First, I will support it because, as I have consistently said, I do think the basic law in this area—the Foreign Intelligence Surveillance Act, or FISA—needs to be updated to respond to changes in technology, which was the purpose of the current, temporary law.

That is why, last August, I voted for a bill (H.R. 3356) to provide such an update—a bill that was supported by a majority of the House, but did not pass because it was considered under a procedure that required a two-thirds vote for passage, which did not occur because of the opposition of the Bush Administration, which was supported by all but 3 of our Republican colleagues. That is also why I voted for another bill to update FISA—H.R. 3773, the ''Responsible Electronic Surveillance That is Overseen, Reviewed, and Effective'' (or RESTORE) Act—which the House passed on November 15th of last year.

Second, I will support it because I think it is distinctly better than the version the Senate passed—as an amendment to the House-passed RESTORE Act—on February 12th.

It does include some good features of the Senate version, including provisions that for the first time will provide statutory requirement that surveillance of the communications of Americans overseas will be done pursuant to appropriate orders of the courts.

But it differs from the Senate version in some important ways, particularly in the way it addresses the current lawsuits brought against several telecommunications companies by parties who claim that the companies acted wrongly by assisting with a surveillance program involving the massive interception of purely domestic communications.

Those lawsuits have been consolidated and are pending in one court, but evidently have made little progress because of the Administration's argument, still awaiting court resolution, that the suits are barred because they involve state secrets. My understanding is that the defendant companies have argued that government's invocation of the state-secrets privilege has had the result of preventing them from defending themselves, although at least one company has stated in regulatory filings that the cases against it are without merit.

President Bush has insisted that Congress throw these cases out of court by giving the companies retroactive immunity for whatever they might have done in connection with the surveillance program, even though the Administration and the companies themselves insist that those actions were lawful and that the plaintiffs' complaints against the companies have no merit.

Regrettably, last month the Senate decided to comply with the President's demand on this point, and their version of this legislation would provide that retroactive immunity.

I do not think that was the right decision. I agree with the Rocky Mountain News, which in a February 15th editorial said ''Letting this litigation proceed would not, as Bush [has] said . . . punish companies that want to 'help America.' Businesses that want to help America need to be mindful of the Constitution—and so should the government.''

That is why I think the approach taken in the measure before us is better. Unlike the Senate version, it would not short-circuit the court by preventing the cases from proceeding. Instead, it would allow the defendant companies to defend themselves by freeing them from the ''state secret'' barrier erected by the Bush Administration.

Under the measure before us, the defendants will be able to demonstrate to the court the evidence they say supports their arguments in a way that assures the continued security of that evidence and that avoids the public disclosure the Administration says would be adverse to the national interest. This is a process that has worked well in criminal cases, and while I am certainly not an expert on the matter, I think it can work when applied to these civil cases.

Mr. Speaker, I think it is a matter of basic fairness to allow the companies now being sued, and those that may be sued in the future, to fully defend themselves and to try to show the court why, as the defendants in the current cases claim, they are already immune under existing law.

That is what this measure does—and, in fact, it does more.

Unlike the Senate version, it will protect the companies from lawsuits for compliance with valid authorizations under the temporary surveillance law (the ''Protect America Act'') passed last August for the period between the expiration of that law (but not the underlying authorizations) and the enactment of more lasting FISA reform legislation.

I strongly approve of that aspect of the legislation because while I did not support its original enactment, I do regret the fact that the temporary law was allowed to lapse.

I thought it should have remained in effect while we in Congress work to replace it with a longer-lasting statute. That was why earlier this year, I twice voted to extend it—first, by passage of a 15-day extension (H.R. 5104) and then by voting for a bill (H.R. 5349) that would have provided a further 21-day extension.

Regrettably, that second extension did not occur. Its failure was because of the opposition of President Bush and the resulting fact

that all our Republican colleagues here in the House, who voted against the extension and thus allowed the "Protect America Act" to lapse—a fact that has been conveniently ignored by many of those who have sponsored television commercials or otherwise complained about that lapse.

In any event, today we have the opportunity to make progress toward the goal of updating the FISA law in a way that will enable our intelligence agencies to obtain information needed to protect the American people while safeguarding our rights under the Constitution. That is what this measure does, and that is why I will vote for it.

For the information of our colleague, I am attaching the February 15th editorial of the Rocky Mountain News that I mentioned earlier.

[From the Rocky Mountain News—Friday, Feb. 15, 2008]

NO IMMUNITY—SENATE VEERS OFF TRACK IN ITS SURVEILLANCE BILL

The Bush administration is in a tizzy because Congress will take its Presidents Day recess and allow the temporary ''terrorist surveillance'' act passed six months ago to expire at midnight Saturday.

Earlier this week, President Bush actually suggested that al-Qaida operatives are watching the calendar, poised to plot new attacks freely with Congress absent—and U.S. intelligence officials will be largely powerless to stop them.

Don't insult the American public, Mr. President. You'll still have the ability to wiretap suspected terrorists—and the warrantless surveillance powers in the bill are valid until August.

Bush is riled because the House is leaving town without adopting immunity provisions in the Senate surveillance bill. The Senate version granted immunity from lawsuits—unwisely, in our view—to telecommunications firms that cooperated with the warrantless wiretaps on overseas calls.

If immunity is in the final legislation—and Bush has said he'd veto any bill that doesn't include it—it would kill the 40-plus lawsuits that have been filed against telecoms in federal court. The litigation challenges the legality of the program and the actions of telecoms that cooperated with the government.

If the lawsuits don't move forward, we may never learn if some telecoms compromised the privacy of innocent Americans. A grant of immunity could also set a dangerous precedent for other businesses when federal agents or local cops who don't have a court order demand private or confidential information about their customers.

(Colorado Sens. Wayne Allard and Ken Salazar both voted to pass the Senate legislation and to oppose an amendment that would have stripped the immunity provisions from the bill.)

Look, we think the government should have greater leeway—and constitutionally, does have greater leeway—to monitor international communications with al-Qaida than it does to intercept domestic phone calls or e-mails.

But we've largely had to take the administration's word that the wiretap program didn't go beyond the narrow confines under which it would be legal. Moreover, any program that lets the government snoop without a judge's approval deserves outside scrutiny to prevent abuses.

In this instance, the lawsuits may reveal whether the wiretaps were targeted or were more like fishing expeditions. We may also learn how effectively the telecoms separated international communications from domestic calls or e-mails.

The government initially tried (and failed) to quash these cases, claiming the program was so top secret that even admitting that private telecoms participated would compromise national security. Federal courts wouldn't buy that line. So AT&T and other telecoms started claiming they were victims—Washington had persuaded them that the program was legal and they had little choice but to assist in the fight against al-Qaida.

Those claims may be true, but they seem to run counter to the experience of Joe Nacchio, the former Qwest CEO who was convicted on insider trading charges last year. Two years ago it was revealed that Nacchio refused to comply with appeals from the government to participate in the warrantless wiretap program; he balked at turning over information about his customers obtained under what Qwest considered suspect legal circumstances.

Court documents released in October revealed that Nacchio first met with national security officials in February 2001—six months before the 9/11 attacks. ''Nacchio's account,'' The Washington Post reported, ''suggests that the Bush administration was seeking to enlist telecommunications firms in programs without court oversight before the terrorist attacks on New York and the Pentagon.''

Letting this litigation proceed would not, as Bush said Wednesday, punish companies that want to ''help America.'' Businesses that want to help America need to be mindful of the Constitution—and so should the government.

Mr. ETHERIDGE. Mr. Speaker, I rise in support of H.R. 3773, the FISA Amendments Act of 2008. This bill will help protect our Nation's security from terrorist threats while also protecting the civil rights and freedoms of our citizens.

On November 15, 2007, I voted in favor of the Responsible Electronic Surveillance That is Overseen, Reviewed, and Effective (RESTORE) Act that passed the United States House of Representatives by a vote of 227 to 189. The FISA Amendments Act includes and enhances the provisions from the RESTORE Act that form a strong framework for how our intelligence agencies operate. This bill requires the FISA court to approve targeting and minimization procedures to ensure that Americans are not targeted and their communications are not disseminated. These procedures would have to be approved prior to any surveillance, with the exception of emergency cases that would allow the government to begin surveillance immediately, provided that they obtain approval from the FISA court within 30 days. Under the FISA Amendments Act, this requirement would extend to American citizens at home and as well as those traveling abroad. To further enhance accountability, this legislation would create a Congressional commission that would conduct hearings and investigation into the President's recent warrantless wiretapping program. This bill grants new authorities for conducting surveillance and collecting intelligence against terrorist organizations, while preserving the requirement that the government obtain a FISA court order, based on probable cause, when targeting Americans.

While the FISA Amendments Act does not include retroactive immunity for telecommunications companies, it does ensure the ability of these companies to fully defend themselves if they are sued in a court of law. This bill provides these telecommunications companies a way to present their defenses in secure proceedings and gives them access to any documents relating to their case that the government could otherwise withhold as "state secrets."

We owe our intelligence agencies clear rules and guidelines in order to perform their duties to the fullest, just as we owe it to every American to protect their rights and freedoms. I support the passage of H.R. 3773, The FISA Amendments Act of 2008, and I urge my colleagues to join me.

Mr. SMITH of Texas. Mr. Speaker, I submit the following for the RECORD.

FISA FIX FOR LAWYERS

National Security: Wiretap law is supposed to protect the U.S. by discovering and foiling terrorist operations. Congressional Democrats seem to think its purpose is to line the pockets of their trial lawyer supporters.

House Democrats want to enact a terrorist surveillance law that puts lawyers' fees before the safety of Americans. It's a bill so skewed that its passage on a vote scheduled for Thursday was questionable even to Democrats in the majority.

At issue is the help given by telecom companies such as AT&T and Verizon in monitoring the telephone and Internet communications of suspected terrorists with contacts within the U.S.

Those heroic firms have saved hundreds, if not thousands, of innocent lives with their cooperation in helping to obtain information that allowed law enforcement to prevent post-9/11 attacks.

Congressional Democrats steadfastly refuse to protect those firms from lawsuits backed by the American Civil Liberties Union. Their message to those patriotic companies seems to be:

You helped President Bush succeed at something we wanted to destroy him over, so now that we control Congress we're going to give you your well-deserved comeuppance.

The ACLU issued a statement expressing delight over the House Democrats' new bill and was also pleased that the Democrats would let the authorization to track terrorists expire in only two years—as if there is any realistic chance that the global war on terror could be behind us by then.

A permanent Foreign Intelligence Surveillance Act could always be revisited or repealed by Congress, yet Speaker Nancy Pelosi's Democrats insist on a FISA sunset provision.

The group said it is ''also heartened by the role retained by the FISA court in overseeing the program,'' an allusion to the fact that under the Democrats' bill, any and all domestic surveillance for anti-terrorism purposes would have to first get the approval of the special FISA courts—a state of affairs that the president has emphatically stated places the nation at risk.

Moreover, it is a state of affairs under which the country is vulnerable today, because the Democratic Congress let FISA expire nearly a month ago.

The Senate's FISA revision provides retroactive protection from lawsuits to the telecom firms. If nothing is done, they could conceivably be liable for hundreds of millions of dollars—which would be some thanks for helping to protect Americans from al-Qaida.

House Democrats instead would give only ''prospective liability protection for telecom companies that assist with lawful surveillance'', according to a statement from House Majority Leader Steny Hoyer.

One of the bill's proposed procedures apparently would be for the firms to tell the judge state secrets as part of their defense

while the ACLU lawyers and other plaintiff attorneys are out of the room.

But the ACLU's strategy in trying to destroy our government's ability to monitor terrorist communications has been to take their cases to federal courts in different regions—in effect, judge shopping.

Because the House Democrats' FISA bill would, as the ACLU puts it, keep ''the courthouse door open,'' chances are that they would be able to find judges only too happy to make the telecom firms pay multimillion-dollar awards. The only just solution is for Congress to grant those firms full retroactive immunity.

As Vice President Dick Cheney recently told the Heritage Foundation, ''those who assist the government in tracking terrorists should not be punished with lawsuits . . . it's not even proper to confirm whether any given company provided assistance.'' He added: ''In some situations, there is no alternative to seeking assistance from the private sector.''

The Center for Responsive Politics reports that trial lawyers contributed some $85 million to Democratic candidates in the 2006 election cycle. Obviously, Democrats believe letting those legal parasites feed off patriotic companies who have saved countless American lives is what is expected of them in return.

Mr. STARK. Madam Speaker, I rise today to support the House's changes to the Foreign Intelligence Surveillance Act, FISA, Amendments Act. After 8 long years of watching Republicans kowtow to the President's tyrannical policies, I am only too happy to stand by a bill that will hold his administration accountable to some of their past actions and prevent future administrations from abusing our civil liberties.

Our government was designed to be of the people, by the people, and for the people. But under President Bush, it has been a government of the executive branch, by the executive branch, and for the executive branch. The Administration's so-called ''security measures''—tapping phones, obtaining personal records, and spying without warrants—have undermined basic freedoms and diminished trust in government.

It will take a great deal of time to clean up the mess left by this administration. We can take an important step forward today by giving telecommunications companies their day in court and establishing strict restrictions to prevent the government from spying whenever and on whomever it pleases. By voting for this bill, we make it clear that we won't let the President make a quick escape from Washington without bringing his transgressions to light. Rather than hide behind the threat of terrorism to justify illegal activities, as past Congresses have done, we will defend the constitutional rights of our constituents.

The Bush administration has tried its hardest to convince us that our country's most basic tenets are unattainable. It believes that in order to protect life, we must sacrifice liberty and the pursuit of happiness. That line of thought is wrong, President Bush is wrong, and I encourage my colleagues to support this bill and show that they are above the executive branch's scare tactics.

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

Pursuant to House Resolution 1041, the previous question is ordered.

The question is on the motion offered by the gentleman from Michigan (Mr. CONYERS).

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

Mr. SMITH of Texas. Mr. Speaker, on that I demand the yeas and nays.

The yeas and nays were ordered.

The vote was taken by electronic device, and there were—yeas 213, nays 197, answered ''present'' 1, not voting 20, as follows:

[Roll No. 145]

YEAS—213

Abercrombie	Grijalva	Obey
Ackerman	Gutierrez	Olver
Allen	Hall (NY)	Ortiz
Altmire	Hare	Pallone
Andrews	Harman	Pascrell
Arcuri	Hastings (FL)	Pastor
Baca	Herseth Sandlin	Payne
Baird	Higgins	Pelosi
Baldwin	Hill	Perlmutter
Barrow	Hinojosa	Peterson (MN)
Bean	Hirono	Pomeroy
Becerra	Hodes	Price (NC)
Berkley	Holt	Rahall
Berman	Honda	Reyes
Berry	Hoyer	Richardson
Bishop (GA)	Inslee	Rodriguez
Bishop (NY)	Israel	Ross
Blumenauer	Jackson (IL)	Rothman
Boswell	Jackson-Lee (TX)	Roybal-Allard
Boucher	Jefferson	Ruppersberger
Boyd (FL)	Johnson (GA)	Ryan (OH)
Boyda (KS)	Johnson, E. B.	Salazar
Brady (PA)	Jones (OH)	Sánchez, Linda T.
Braley (IA)	Kagen	Sanchez, Loretta
Brown, Corrine	Kanjorski	Sarbanes
Butterfield	Kaptur	Schakowsky
Capps	Kennedy	Schiff
Cardoza	Kildee	Schwartz
Carnahan	Kilpatrick	Scott (GA)
Carson	Kind	Scott (VA)
Castor	Klein (FL)	Serrano
Chandler	Langevin	Sestak
Clarke	Larsen (WA)	Shea-Porter
Clay	Larson (CT)	Sherman
Cleaver	Lee	Sires
Clyburn	Levin	Skelton
Cohen	Lewis (GA)	Slaughter
Conyers	Lipinski	Smith (WA)
Costa	Loebsack	Snyder
Costello	Lofgren, Zoe	Solis
Courtney	Lowey	Space
Crowley	Lynch	Spratt
Cuellar	Mahoney (FL)	Stark
Cummings	Maloney (NY)	Stupak
Davis (AL)	Markey	Sutton
Davis (CA)	Marshall	Tanner
Davis (IL)	Matheson	Tauscher
DeFazio	Matsui	Taylor
DeGette	McCarthy (NY)	Thompson (CA)
Delahunt	McCollum (MN)	Thompson (MS)
DeLauro	McGovern	Tierney
Dicks	McIntyre	Towns
Dingell	McNerney	Tsongas
Doggett	McNulty	Udall (CO)
Donnelly	Meek (FL)	Udall (NM)
Doyle	Meeks (NY)	Van Hollen
Edwards	Melancon	Velázquez
Ellison	Michaud	Visclosky
Ellsworth	Miller (NC)	Walz (MN)
Emanuel	Miller, George	Wasserman Schultz
Engel	Mitchell	Waters
Eshoo	Mollohan	Watson
Etheridge	Moore (KS)	Watt
Farr	Moore (WI)	Waxman
Fattah	Moran (VA)	Weiner
Foster	Murphy (CT)	Wexler
Frank (MA)	Murphy, Patrick	Wilson (OH)
Giffords	Murtha	Wu
Gillibrand	Nadler	Wynn
Gonzalez	Napolitano	Yarmuth
Gordon	Neal (MA)	
Green, Al		

NAYS—197

Aderholt	Bilbray	Boren
Akin	Bilirakis	Brady (TX)
Alexander	Bishop (UT)	Broun (GA)
Bachmann	Blackburn	Brown (SC)
Bachus	Blunt	Buchanan
Barrett (SC)	Boehner	Burgess
Bartlett (MD)	Bonner	Burton (IN)
Barton (TX)	Bono Mack	Buyer
Biggert	Boozman	Calvert
Camp (MI)	Hinchey	Platts
Campbell (CA)	Hobson	Poe
Cannon	Hoekstra	Porter
Cantor	Holden	Price (GA)
Capito	Hulshof	Pryce (OH)
Capuano	Inglis (SC)	Putnam
Carney	Issa	Radanovich
Carter	Johnson (IL)	Ramstad
Castle	Johnson, Sam	Regula
Chabot	Jones (NC)	Rehberg
Coble	Jordan	Reichert
Cole (OK)	Keller	Renzi
Conaway	King (IA)	Reynolds
Cooper	King (NY)	Rogers (AL)
Crenshaw	Kingston	Rogers (KY)
Cubin	Kirk	Rogers (MI)
Culberson	Kline (MN)	Rohrabacher
Davis (KY)	Knollenberg	Ros-Lehtinen
Davis, David	Kucinich	Roskam
Davis, Tom	Kuhl (NY)	Royce
Deal (GA)	Lamborn	Ryan (WI)
Dent	Lampson	Sali
Diaz-Balart, L.	Latham	Saxton
Diaz-Balart, M.	LaTourette	Schmidt
Doolittle	Latta	Sensenbrenner
Drake	Lewis (CA)	Sessions
Dreier	Lewis (KY)	Shadegg
Duncan	Linder	Shays
Ehlers	LoBiondo	Shimkus
Emerson	Lucas	Shuler
English (PA)	Lungren, Daniel E.	Shuster
Fallin	Mack	Simpson
Feeney	Manzullo	Smith (NE)
Ferguson	Marchant	Smith (NJ)
Filner	McCarthy (CA)	Smith (TX)
Flake	McCaul (TX)	Souder
Forbes	McCotter	Stearns
Fortenberry	McCrery	Sullivan
Fossella	McDermott	Terry
Foxx	McHenry	Thornberry
Franks (AZ)	McHugh	Tiahrt
Frelinghuysen	McKeon	Tiberi
Gallegly	McMorris Rodgers	Turner
Garrett (NJ)	Mica	Upton
Gerlach	Miller (FL)	Walberg
Gilchrest	Miller (MI)	Walden (OR)
Gingrey	Miller, Gary	Wamp
Gohmert	Moran (KS)	Welch (VT)
Goode	Murphy, Tim	Weldon (FL)
Goodlatte	Myrick	Westmoreland
Granger	Neugebauer	Whitfield (KY)
Graves	Paul	Wilson (NM)
Hall (TX)	Pearce	Wilson (SC)
Hastings (WA)	Pence	Wittman (VA)
Hayes	Petri	Wolf
Heller	Pitts	Young (FL)
Hensarling		
Herger		

ANSWERED ''PRESENT''—1

Davis, Lincoln

NOT VOTING—20

Boustany	Hunter	Rangel
Brown-Waite, Ginny	LaHood	Rush
Cramer	Musgrave	Tancredo
Everett	Nunes	Walsh (NY)
Green, Gene	Oberstar	Weller
Hooley	Peterson (PA)	Woolsey
	Pickering	Young (AK)

□ 1408

Messrs. KINGSTON, EHLERS, and McDERMOTT changed their vote from ''yea'' to ''nay.''

So the motion was agreed to.

The result of the vote was announced as above recorded.

A motion to reconsider was laid on the table.

THE JOURNAL

The SPEAKER pro tempore. Pursuant to clause 8 of rule XX, the unfinished business is the question on agreeing to the Speaker's approval of the Journal, on which the yeas and nays were ordered.

The question is on the Speaker's approval of the Journal.

The vote was taken by electronic device, and there were—yeas 202, nays