sawdust. They would use the sawdust as filler back in the old days.

Well, during unregulated times, just like packing sawdust into sausages, what these folks did is, they took good loans and bad loans, packaged them up. They sliced them up, then they securitized them, and sent them out, sold them, and everybody was happy and everybody was fat and everybody was making a lot of money, until it all came home to roost. A whole lot of folks could not make housing payments.

So what we found with the subprime loan scandal is 2.2 million families with subprime loans will lose their homes to foreclosure; 7.2 million with subprime mortgages have an outstanding mortgage value of $1.3 trillion. And when those interest rates reset, a whole lot of them will not be able to pay the bills to keep their homes.

All of this happened under the nose of regulators who came to Government not wanting to regulate. And it caused severe damage to our country. Now, add to that a reckless fiscal policy, a trade deficit in which we are hemorrhaging in red ink and shipping jobs overseas and a scandal in the home mortgage industry that caused enormous damage to our country, made a lot of folks rich in the short term, and victimized a lot of others. Add to that the unbelievable speculation that is going on in hedge funds, most all of it outside of the view of regulators.

Hedge funds are about $1.2 to $1.5 trillion in value; but that does not describe their importance to the economy. They are heavily leveraged. That $1.2 to $1.5 trillion of hedge funds is engaged in one-half of all of the trades every day on the New York Stock Exchange. They are engaged in, among other things, credit default swaps.

There is something called credit default swaps, derivatives, with notional values of $43 trillion. There is so much unbelievable speculation with dramatic amounts of leverage in hedge funds and derivatives that it is scary. Nobody knows what is going on because it is outside the view of regulators. That is the way they want to keep it.

We will talk about stimulus; we will talk about short-term measures. But if we do not deal with this issue of a fiscal policy that is way off track, a trade policy that is an abject failure, regulators who have no interest in regulating, scandals will develop and mature right under their noses, this country is not going to recover. Our economy is not going to thrive and grow. It is fine to do a stimulus package of 1 percent of GDP, I do not object to that. We will borrow the money from China, likely, to do it; perhaps put some money in the hands of people who will go to Wal-Mart and buy goods from China, for all I know.

But, psychologically, I think it is fine to create a fiscal policy initiative that compliments what they are doing at the Fed with monetary policy. But that will not solve the underlying problems in our economy. We have deep abiding problems in fiscal policy, trade policy, and regulatory failures.

This Congress and this President have a responsibility to address them. Talking about stimulus, and just talking about stimulus, means we have not addressed that which moves this ship of state forward in the future, creating expansion opportunities and jobs and economic health. The only way we do that is to stare truth in the eye and understand what is causing the problems in the country and how to fix it.

There is an old saying on Wall Street I was told by a friend: You cannot tell who is swimming naked until the tide goes out. Well, the tide has gone out, and now we are going to see some sights that are not very pretty. It has to do with speculation and a whole series of things that we have to correct. And my hope is, starting this evening at the State of the Union Address and following that, at last long last, we might see a President and a Congress work together to face the truth about fiscal policy, trade policy, and inept regulation that has put this country in significant difficulty and trouble.

We need not have a future that manifests that trouble forever. If we take bold action and courageous action to understand what is wrong and what the menu of items are that we need to go to fix it, I think we can have a much better and brighter economic future in this country. I want to be a part of that work, and I know many of my colleagues do as well. So let's hope the first step to do that begins this evening at the joint session of the Congress at the State of the Union Address.

EXECUTIVE SESSION

NOMINATION DISCHARGED

Mr. DORGAN. Mr. President, I ask unanimous consent that the Senate proceed to executive session, that the Agriculture Committee be discharged of PN 1112, the nomination of Ed Schafer, to be Secretary of Agriculture; that the Senate proceed to the nomination, that the nomination be confirmed, and the motion to reconsider be laid upon the table; that any statements relating to the nomination be printed in the RECORD, the President be immediately notified of the Senate's action, and the Senate return to legislative session.

My understanding is this was cleared on both sides. I am particularly proud to make this request. Former Governor Schafer is a distinguished former Governor from our State. It is a great honor for our State to have him nominated.

The ACTING PRESIDENT pro tempore. Is there objection?

Mr. BOND. Reserving the right to object, and I will not object, I wish to join with the Senator from North Dakota, who is doing a fine thing. We appreciate the support on both sides of the aisle. We obviously need a good and strong Secretary of Agriculture, and we are pleased to see this body move forward. I do not object. I thank the sponsors.

Mr. DORGAN. Mr. President, might I also say as we ask for the consent that my colleague, Senator CONRAD, worked very hard to accomplish this in the Agriculture Committee. He joins me as well.

The ACTING PRESIDENT pro tempore. Without objection, it is so ordered.

The nomination considered and confirmed is as follows:

DEPARTMENT OF AGRICULTURE

Ed Schafer, of North Dakota, to be Secretary of Agriculture.

LEGISLATIVE SESSION

The ACTING PRESIDENT pro tempore. Under the previous order, the Senate will now return to legislative session.

CONCLUSION OF MORNING BUSINESS

The ACTING PRESIDENT pro tempore. Morning business is closed.

FISA AMENDMENTS ACT OF 2007

The ACTING PRESIDENT pro tempore. Under the previous order, the Senate will resume consideration of S. 2248, which the clerk will report by title.

The bill clerk read as follows:

A bill (S. 2448) to amend the Foreign Intelligence Surveillance Act of 1978, to modernize and streamline the provisions of that Act, and for other purposes.

Pending:

Rockefeller/Bond amendment No. 3911, in the nature of a substitute.

Feingold/Dodd amendment No. 3909 (to amendment No. 3911), to require that certain records be submitted to Congress.

Bond amendment No. 3916 (to amendment No. 3909), of a perfecting nature.

Reid amendment No. 3918 (to the language proposed to be stricken by Rockefeller/Bond amendment No. 3911), relative to the extension of the Protect America Act of 2007.

The ACTING PRESIDENT pro tempore. Under the previous order, the time until 4:40 shall be equally divided and controlled between the two leaders or their designees with the final 20 minutes equally divided between the two leaders, with the majority leader controlling the final 10 minutes.

Mr. HATCH. Mr. President, I ask unanimous consent that I have at least 10 minutes to give my remarks on FISA.

The ACTING PRESIDENT pro tempore. Without objection, it is so ordered.

Mr. HATCH. Mr. President, I have been to this floor on numerous occasions to aggressively support the immunity provisions of the FISA modernization bill. I cannot understate my

passion for this issue. I am of the firm belief that the lawsuits facing the telecom providers constitute a grave threat to national security. The potential risks from inadvertent disclosure of classified information cannot be understated. The potential damage to our intelligence sources and methods from allowing these lawsuits to go forward is substantial. Unfortunately, the more we delay this legislation, the more likely it is that our sensitive intelligence methods will be exposed, and not just exposed to the American people but to al-Qaida and thousands of other terrorists and enemies around the world. Remember, the very point of these lawsuits is to prove plaintiffs' claims by disclosing classified information through the discovery process.

Let's think about this. Do we really want any person to be able to make accusations that are utter hearsay and then be given the ability to jeopardize the intelligence community's sources and methods by demanding discovery during frivolous litigation?

We simply cannot do this. We should never reveal our intelligence agencies' technical capabilities, who they work with, who they target, or what their strengths and weaknesses are. We on the Intelligence Committees have that assignment because we are expected to honor the classified nature of those matters. The reasons should be obvious to all of us.

Here is an example that illustrates this point: If criminals are running drugs northbound along I–95, they may have an idea that they will encounter police checkpoints. But they need to transport the drugs, so they will balance this risk. But what if they know for sure there is a checkpoint in a specific State? What if they then find out the checkpoint is at a specific mile marker? Will they change their routes and methods? You better believe they will. They are not stupid and neither is al-Qaida. Does it really make sense for us to broadcast across the globe, over the Internet, how we work? Do we want to replace the uncertainty of how we track terrorists with established fact?

Confirmations or denials of the allegations in the lawsuits will certainly reveal certain intelligence agencies' sources and methods. Even when the proceedings are in camera or ex parte, this risk is still apparent. I cannot stress this point enough: The identity of any company that may or may not have cooperated with the Government with the terrorist surveillance program is highly classified. Accusations and hearsay do not confirm any relationship. The very activities these cases seek to disclose could reveal whether a company has or hasn't assisted the Government. In addition, any verdict in the case would likely provide the same type of information, and replacing the Government for these companies in the litigation does not solve the problem.

Our enemies have tough decisions to make regarding how they communicate. They cannot stay silent forever, and they have to weigh the need to communicate against the chances that their communications are intercepted. We know they are carefully watching us and following every proceeding to see how our Government collects information. If they think they see a weakness in our collection capabilities, they will certainly try to take advantage of it. Make no mistake, al-Qaida and the other terrorist organizations would benefit tremendously from learning the identity of any company that assisted the Government following the attacks of 9/11.

A few of my colleagues and many in the outside media have highlighted accusations from a former telecom employee. His name is Mark Klein. Mr. Klein claims he has proof that computers diverted domestic electronic communications from a phone company directly to the NSA, the National Security Agency. In fact, his accusations play a major role in one of the lawsuits currently facing a telecom provider.

It is important to note the Government chose not to classify Klein's declarations or exhibits in one of the lawsuits. The Government could have, but it didn't. So Klein's court documents are public. Due to the ongoing litigation, I do not want to speak directly to his claims, but I will highlight a statement that was made by an official representing the Government during a court proceeding in one of the lawsuits against a telecom provider. This statement was from the Assistant Attorney General on June 23, 2006, in front of Judge Vaughn Walker. Here is what was said about the decision not to classify Klein's declarations. This is the Government statement regarding Mark Klein:

> We have not asserted a privilege over the Klein declarations or exhibits. Mr. Klein and Marcus never had access to any of the relevant classified information here, and with all respect to them, through no fault or failure of their own, they don't know anything.

I cannot understate the importance of this quote as it has never been mentioned during this debate. No further commentary on it is needed, but I think its meaning is extremely important when Senators and the public weigh the relevancy and reliability of Klein's accusations. I am particularly hopeful that three of my distinguished colleagues who have highlighted Klein's claims on this floor are aware of these statements from the Government. I hope we all realize Klein's accusations highlight only one side of the story.

I also want to draw attention to another claim repeatedly made on this floor: the false declaration that the immunity provision in this bill will ''close the courthouse door.'' These claims seek to convey the false impression that the immunity provision in this bill will halt all litigation relating to the terrorist surveillance program, or TSP.

This is absolutely false. There are no fewer than seven lawsuits currently pending against Government officials that are related to the TSP. The immunity provision in this bill will not—I repeat that, will not—affect any of those cases. These cases are completely unaffected by the immunity provision in this bill.

Here are the cases. Al-Haramain Islamic Foundation, Inc. v. George W. Bush; ACLU v. National Security Agency; Center for Constitutional Rights v. George W. Bush; Guzzi v. George W. Bush; Henderson v. Keith Alexander; Shubert v. George W. Bush; Tooley v. George W. Bush.

Finally, it is imperative for us to understand national security is greatly dependent on the cooperation of telecom providers. We cannot do it by ourselves. Yet many foreign governments are in quite the opposite situation, one which gives them an advantage in certain electronic interceptions. Many foreign telecoms are run by the respective host government. Many others have government officials with controlling authority. These countries do not have to worry about telecom cooperation. They can simply force the telecoms to comply.

We have chosen not to have that system in our great Nation. Rather, we rely on the voluntary assistance of telecommunication providers. When these companies are asked to assist the intelligence community based on a program authorized by the President and based on assurances from the highest levels of Government that the program has been determined to be lawful, they should be able to rely on these representations.

For those who argue we need a compromise, let me be clear: We already have a compromise. The Government wanted more than what is represented in this bill, and they did not get it. The chairman of the Senate Select Committee on Intelligence stated the following in the Intelligence Committee report:

> The [Intelligence] Committee did not endorse the immunity provision lightly. It was the informed judgment of the Committee after months in which we carefully reviewed the facts in the matter. The Committee reached the conclusion that the immunity remedy was appropriate in this case after holding numerous hearings and briefings on the subject and conducting thorough examination of the letters sent by the U.S. Government to the telecommunications companies.

The immunity provisions in this bill are limited in scope. Not everyone is going to be happy with them, and that is the whole point. I, for one, wanted to see more protection for companies and Government officials in this bill, but I am willing to accept the compromise, and my colleagues should be willing to do the same. We are not all getting what we want. We are getting what the public has to have—what the public needs.

We have been working on legislation to modernize FISA since at least April

of 2007. I am extremely proud of the bipartisan efforts that led to this bill in the Intelligence Committee where all of the investigations were made, where the intelligence was protected. We found a balance. Let's show the confidence and resolve to vote on this compromise, not back away from it.

I will support cloture on the Rockefeller-Bond substitute amendment, and I urge my colleagues to do the same.

In that regard, I pray that my colleagues will listen to the distinguished ranking member of the Intelligence Committee, Senator BOND, who has played a significantly proper and important role in helping to get this bill through the committee and to the Senate floor. This is a major bill of protection for our country, and I attribute much of the success of it to Senator ROCKEFELLER, the chairman of the committee, and Senator BOND, the ranking member, both of whom have been sterling leaders on this issue. I hope it is not true that anybody in this body will support some of the amendments that may be brought to the Senate floor because we have looked at this issue frontwards, backwards, all over the place. We have examined it. We spent many months on this subject in the Intelligence Committee. That should not be ignored. It passed the Intelligence Committee 13 to 2 compared to the substitute we defeated with cloture that was 10 to 9 in the Judiciary Committee.

Mr. President, I ask that we support cloture on this bill.

The ACTING PRESIDENT pro tempore. The Senator from Missouri.

Mr. BOND. Mr. President, I believe our time on this side has expired. I thank my colleague from Utah, who is a valued member of the Intelligence Committee and the Judiciary Committee, truly a real authority in this area. When he speaks, he speaks from not only a great deal of knowledge but study. We are grateful for his assistance. He is a tremendous asset to this body in many ways but none more so than on the Intelligence Committee.

The ACTING PRESIDENT pro tempore. The Senator from West Virginia.

Mr. ROCKEFELLER. Mr. President, I rise to oppose the vote to invoke cloture on the FISA bill. I have no choice but to vote against cloture in order to preserve the rights of my colleagues to have their amendments to this landmark legislation considered.

It has been a very weird process. The FISA legislation before the Senate has been taken, in effect, hostage. In a transparent attempt to score political points off of national security issues, the White House has decided, once again, that scaring the American people with unfounded and manipulative claims is in order.

The President's decision to use the FISA bill in a game of chicken represents a new low, even by Washington standards.

The administration's practice of placing politics above national security when it serves the poll-driven agenda of its advisers has become an addiction in this White House. Even when the Senate is on the verge of producing much needed national security legislation that the President supports and wants, the addictive political cravings that have coursed through the administration's body for the past 7 years kick in once again.

As is often the case, addictions produce behavior that is both irrational, and in this case more, unfortunately, self-destructive. In this case, the White House has misguidedly calculated that it is worth jeopardizing passage of a bill which they support, which strengthens the collection of foreign intelligence, in order to obtain a short-term political objective.

The White House is gambling with the safety of Americans and the continued cooperation of companies that we rely on to aid in our efforts to protect our country. It is time for the Senate to take a stand and reject these reprehensible tactics.

The Senate Intelligence Committee took enormous care to craft legislation that would give our intelligence community greater latitude to conduct surveillance of foreign targets while not compromising the constitutional and statutory protections afforded to Americans both here and overseas.

Senator KIT BOND and I worked extremely closely on that, as we did, as I will explain, with many others. This was a painstaking process. It went over many months, but it ultimately produced this balanced legislation that the vice chairman and the committee and I sought.

It is a solid bill. And I believe with some limited changes it can be a better bill; limited changes, I might add, that will in no way impede or in any way intrude into the collection of the intelligence we need.

Every step of the way during the process of producing this bill gave me great satisfaction. We worked in a consultive way with the administration. These discussions have always been in good faith. We have talked as professionals, trying to work out a hard problem to which most people do not pay a lot of attention but which has enormous consequences for our country, and we have done it in good faith, the very good faith that the actions of the White House now threaten to unravel.

From when the Intelligence Committee called on the administration to propose a FISA modernization bill last spring—the vice chairman and I did that—to the many committee hearings that followed, to section-by-section, line-by-line, word-by-word consultations too numerous to count that we had with the lawyers and intelligence experts in the Justice Department, from the National Security Agency, from the Office of the Director of National Intelligence to outside experts, we have worked in good faith with the administration to achieve, against, frankly, considerable odds, the unthinkable, to wit: a bipartisan bill dealing with the issues of profound complexity that has the endorsement of not only the President but also of the intelligence community professionals who will be the ones who carry out this surveillance. They want this bill.

The committee included in its FISA bill a narrowly crafted provision that would provide immunity for telecommunications companies that participated in the President's warrantless surveillance program after September 11 and until the program was placed under court authorization last January.

We rejected the administration's proposed open-ended language in defining very tailored immunity language. We rejected their open-ended language to extend immunity to Government officials. That was taken out. So if there was wrongdoing somewhere, do not make the assumption automatically, without thinking this thing through deeply, that it came from a private sector entity as opposed to public officials.

I realize this is a controversial matter with many of my colleagues, particularly on my side of the aisle, but I reject the games that are being played on both sides: by those Senators who are prepared to filibuster the bill due to their opposition to narrow immunity, and the administration's wishes to prevent the Senate from considering any alternative amendments to the immunity provision.

We should debate the liability issue fully, and the Senate should be allowed to consider alternative amendments. And I say this, and I think the vice chairman would agree with me, out of an abundance of confidence that the committee position will ultimately be sustained by the Senate in the end.

The majority leader has made prompt passage of the FISA bill the top priority for the Senate. He pushed off other subjects so that it could be conferenced with the House and eventually be placed on the President's desk for his signature. If allowed, the Senate can complete action on the FISA bill in a matter of a few days. Unlike many bills the Senate considers where the number of amendments that can be disposed of can approach or exceed 100 or 150 or 175, passage of the FISA bill will probably involve relatively modest numbers of amendments and a very manageable number of amendments.

I estimate that number would be somewhere in the 12-to-15 amendment range, probably fewer. Some of these amendments I would support as needed as improvements to the bill of the committee, the Intelligence Committee. Many I would oppose because of my concern that it would undo the careful balance we achieved in the underlying Committee bill. This is a stitched piece of work between collection of intelligence for the national security and

the rights and privacy of individuals. I will oppose anything that undoes that balance.

The amendments that are likely to pass with a majority vote, at least in my view, such as the Feinstein exclusivity and Cardin sunset amendments, are further refinements of provisions already in the Intelligence Committee bill, and they in no way bear on the collection of intelligence authorities sought and provided by our bill. Those that would undercut these authorities to be able to do collection, I am confident, would go down to defeat.

But the Republican leadership, under orders from the White House, objected to these amendments being considered and voted on, and the bill passed before the February 1 expiration of the temporary and flawed Protect America Act passed last August. So that is where we are going to be unless we can resolve this in the Senate, which we could do by the end of the week.

Why? Why has the White House used obstructionist tactics to prevent the Senate from passing a FISA bill that it wants, that it has declared acceptable?

The President says he wants the Intelligence Committee bill passed as soon as possible. He said as recently as last Friday that he understands there may be some limited number of changes that will be needed to make the bill stronger. Others, including Minority Leader MCCONNELL and Vice Chairman BOND, also have acknowledged the reality that amendments will have to be brought up and voted on before the Senate can pass the bill. That is, after all, the way of the Senate.

Why, then, are they preventing the Senate from voting on the limited number of amendments before us and passing the bill, a bill that they want? Why? A bill that has everything to do with the future of our country, our national security, and a bill which we will not soon come to again if we don't achieve success in the coming days.

The majority leader has repeatedly offered the proposal to extend the February 1 expiration date in the current stopgap law 30 days to allow sufficient time to complete our work on the legislation. But each time this 30-day extension consent request was sought, it was killed by the Republican leadership under orders from the White House.

Why in the world would a temporary extension be objectionable to a President who is on record as saying he doesn't want the current law to expire without a more lasting FISA modernization bill in place? Yet, in one of the most astounding ''Alice in Wonderland'' moments I have ever witnessed in my time in the Senate, the White House announced last week that the President would veto a 30-day extension of the current foreign collection authorities passed by Congress.

So let's recap. The President wants the FISA bill passed by the Senate, but he has sent the decree down to the Republican leadership that they are to prevent its prompt passage. Well, prompt passage we have to have. The President does not want the current 6-month Protect America Act to expire this Friday. He does not want that to happen. But he has stated he will veto any extension and thereby ensure that it will expire. What more evidence is needed to demonstrate the irrational and self-destructive political addiction that drives this White House? Doesn't drive the vice chairman of the Intelligence Committee, I guarantee that.

Under the tortured logic of protecting America against terrorism, the White House has decided to exercise, frankly, its own form of political terrorism and has taken the FISA bill hostage.

From the beginning, the administration has demonstrated a deep-seated contempt for the role of Congress in authorizing and monitoring intelligence activities.

Whether it is the National Security Agency's warrantless surveillance program or the Central Intelligence Agency's secret detention and interrogation program, the White House for over 5 years walled off the Congress and the courts from conducting the sort of meaningful oversight and checks and balances that are essential to making sure our intelligence programs are on sound legal operational footing.

To make matters worse, the administration has successfully used objections and delaying tactics over the past 3 years to keep the intelligence authorization bill from being passed and signed into law. It is this flawed policy of Executive Branch unilateralism that has created the mess we are now dealing with.

There is no possible way I can overstate the importance of this bill. But it is hard to explain. Everybody can grasp on to the immunity issue, leap to one side or the other, often without sufficient thought. But the bill as a whole, meshed together as a whole like an Appalachian quilt, is a thing of beauty, can be improved, and should be passed.

Nevertheless, I urge my colleagues to oppose the Republican cloture motion on the FISA bill so that we can reassert something called the role of Congress that we must play on these and other important national security matters. Oversight is what we do. We don't write a lot of bills in the Intelligence Committee, but we do oversight. But it is not welcome in the current atmosphere.

I urge my colleagues to oppose the Republican cloture motion so that we can consider on their merits the limited, manageable number of amendments to the bill and, in the process, push bipartisan FISA reform across the finish line.

I know Vice Chairman BOND and others are ready to get back to business and start disposing of amendments. I feel confident that he and I, as managers of this bill, will work closely, as we have in the committee, to ensure that we do no unintended harm to this bill in the matters of collection of intelligence or any other unbalancing of this Appalachian craftwork.

There is still time for the Senate to work its way on the FISA bill and pass it before the week's end. I hope we do so.

I yield the floor.

The ACTING PRESIDENT pro tempore. The Senator from Missouri.

Mr. BOND. Mr. President, it is my understanding that this side has 40 minutes of debate; is that correct?

The ACTING PRESIDENT pro tempore. The Senator's side has 46 minutes.

Mr. BOND. Mr. President, I ask unanimous consent that that be divided; that I be allocated 15 minutes and that I be notified when my 15 minutes is up; that at the appropriate time, the Senator from Texas be recognized for 15 minutes; and then, after intervening discussion from the other side, the Senator from Georgia, Mr. CHAMBLISS, be recognized for 5 minutes. I would reserve the remainder of the time for closing argument.

The ACTING PRESIDENT pro tempore. Without objection, it is so ordered.

Mr. BOND. I thank the Chair.

Mr. President, we began consideration of this bill on December 17, the FISA Amendments Act of 2007. As my friend the chairman said, it was passed by the Senate Intelligence Committee with overwhelming bipartisan support. It has garnered the support of the Director of National Intelligence, and I believe it is the way forward.

I was a bit amused to hear my friend say that the FISA bill was being taken hostage; they were scoring political points. I haven't heard from the White House anything other than they want to have this bill passed.

We have sought to protect the rights of Republican Members on the minority side. We have suggested that this bill is so controversial, as all intelligence bills are, that amendments be subjected to a 60-vote majority. The simple fact is, we could pass perhaps a number of amendments that could destroy the structure of the bill we have presented and put us in the position where it would not get the 60 votes needed to pass.

My suggestion is that we move forward accepting some amendments. There are amendments on both sides, I agree with the chairman, that can be accepted. Maybe we could even accept them without a vote or accept votes on others at a simple majority, a 51-vote majority, and then on certain controversial ones, we may have to have 60 votes. But we are ready to move forward. We are not the ones who have held up this bill. Very briefly, in April, the Director of National Intelligence, Admiral McConnell—and I will refer to him as the DNI—sent a bill to the Senate Intelligence Committee and said FISA is out of date. It has to be updated. He came before us and testified in May. I asked him to do something.

Nothing happened. He came before the full Senate, actually, in closed session, all Senators invited; that was in June. He explained how urgent it was and how we were being left deaf and blind to communications of terrorists. Nothing happened.

It was at the end of that session, going into the August recess, that he proposed a temporary shortened version of FISA which became the Protect America Act. I was pleased to support that in the Senate. It passed the House and was signed.

We came back in September, knowing we had to work together on a bipartisan basis, and the Senate Intelligence Committee and staff worked very hard on a bipartisan basis to produce a bill, a very good bill. It was the ultimate compromise. There were some on both sides who were sullen but not rebellious. But we got the job done. We provided the tools the intelligence community needed and significantly expanded the protection of American civil liberties and privacy rights.

The bill sat on the floor in October. It finally came to the floor December 17. A number on the majority side spoke out against the civil liability protection afforded providers who allegedly assisted the Government with the President's terrorist surveillance program, or TSP. They criticized various provisions in the Intelligence Committee bill. They spoke in favor of what regrettably was a partisan Judiciary Committee substitute.

Debate is good for democracy but only if it is based on facts. Unfortunately, during the December filibuster, we heard a number of allegations, accusations, and even misrepresentation about the committee's bill and the TSP. Some of those comments will be repeated today.

Our intelligence community professionals must have the tools they need to protect us. This is not the time to pass legislation that will make people feel good or will score political points. We must pass a bill the DNI will support and, thus, the President will sign. That should be our goal. Distorting the truth will not help us get there.

The record must be set straight, and these are some of the myths we have heard. What are the facts? We were told that a ''new and aggressive'' interpretation of article II authority was used to justify the TSP. There is nothing new or aggressive about relying on the President's article II authority in the context of foreign intelligence surveillance.

Courts, including the FISA Court of Review in the 2002 In re: Sealed Case decision and the Fourth Circuit in the Truong case, have long recognized distinctions between domestic and foreign surveillance and the President's constitutional authority to conduct foreign intelligence surveillance. Nor is it ''an invitation to lawlessness'' to argue that the President has inherent constitutional authority to wiretap without a court order. The Constitution is the highest law of the land and trumps any statute.

In 1978, when Congress recognized the tension between FISA and the President's inherent authority under article II, they noted that warrantless surveillance for foreign intelligence gathering has been an integral part of our Nation's foreign intelligence. During World War II, our warrantless surveillance of the German and Japanese militaries and the breaking of their codes preserved our democracy. More recently, the Clinton administration conducted a warrantless search of the residence of convicted spy Aldrich Ames.

The Intelligence Committee conducted a comprehensive, bipartisan review of the TSP. There is no evidence to substantiate the claims that the administration began its warrantless surveillance before September 11 or that the TSP covered domestic calls between neighbors, friends, and loved ones. As the President has stated, the TSP collected international calls involving members of al-Qaida.

For many months, critics have argued that TSP could have been conducted under FISA. That argument needs to be laid to rest. A decision by a FISA court last spring proved that the TSP could not have been done under FISA as it existed. The court decision resulted in significant intelligence gaps which led to the passage of the Protect America Act.

I was not there, but I understand this matter was discussed by the President with the top leaders of this body and the other body, as well as the Intelligence Committee, and was told at the time it would not be possible to redraft and change the old FISA law in time to collect the critical information they hoped to gather before attacks occurred immediately following September 11.

The liability protection for those carriers who allegedly assisted the Government with the TSP lies at the heart of this legislation. The President did what he had to do under article II, and our country was safer for it, and our country was safer because some of the carriers alleged to have participated acted in reliance and good faith on orders of the Attorney General, transmitting the President's order—and the intelligence community.

In his original FISA modernization request in April of 2007, the DNI asked for full liability protection for all those allegedly involved. Some Members have attacked DNI McConnell's integrity, calling him ''an accidental truth teller'' and accusing him of backing out of an agreement made under the PAA. These comments are not only unjustified, unwarranted, and unfair, they are counterproductive. Throughout this debate, the DNI and other intelligence professionals have given us unbiased advice and technical assistance. They have assisted Democrats and Republicans. We need to focus on the task at hand, not engage in personal attacks against a man who has served his country honorably in the military and the intelligence community, and continues to do so as head of the community.

Some of the Members have downplayed the need for liability protection. They argue that carriers already have statutory immunity and that continued litigation will not harm providers or our intelligence efforts. These statements reflect a startling lack of knowledge about our intelligence collection, which is dangerous to the continued operation of our gathering.

First, the companies cannot prove they are entitled to statutory immunity because the Government must assert state secrets to protect their intelligence collection methods. Second, while it is true that the existence of the TSP has been revealed, there are still, fortunately, a few details about the program that have not. Each day the lawsuits continue—with the prospect of civil discovery—there come new risks that sensitive details about our intelligence sources and methods will be revealed. As General Hayden stated a year and a half ago: The disclosure of the TSP has had a significant impact on intelligence gathering of terrorists. We are applying the Darwinian theory. We are only capturing the dumb ones. We should not give terrorists additional insight through continued TSP litigation.

Further, our intelligence and law enforcement agencies rely on the willingness of providers to cooperate—in emergencies, as with the kidnapping of a child, or when court orders are not required. Yet some carriers have already told us if they do not get liability protection, they will not be able to risk their business, their reputation, by continuing to help without court orders. That would be devastating to our intelligence collection.

Our committee weighed all these arguments for and against liability protection. We concluded by a 12-to-3 bipartisan vote that civil liability protection for providers—and only providers, not Government officials—was not only fair, it was the only way to safeguard our intelligence sources and methods, and to ensure the continued cooperation of the providers.

Substitution is not a solution since it would allow civil discovery to proceed against providers, still leaving them open to disclosure and exceedingly serious competitive and reputational harm, perhaps even physical retaliation by radicals who oppose our intelligence gathering. The intelligence community advised us through testimony and gave us documents that these companies acted in good faith, and we in the committee agreed with them. The providers who may have participated relied upon representations from the highest levels of Government.

There is no need to create a statutory mechanism for a court, whether it be the FISA Court or any other, to second-guess this determination. Allowing

a court to do so would throw uncertainty into an area where the committee's intent is clear: The ongoing civil litigation against providers must end. On this last point, the term ''amnesty'' was tossed around in December. But that incorrectly assumes that alleged carriers did something illegal. These carriers do not need amnesty. They did nothing wrong. They deserve liability protection.

As I mentioned earlier, the DNI said he will support the Intelligence Committee's bill with two revisions. Yet some Members insist there are fatal flaws. We heard, No. 1, that there are no consequences if the FISC rejects the targeting/minimization procedures; No. 2, the bill does not contain a ''reverse targeting'' prohibition; and, No. 3, it allows warrantless interception of purely domestic communications. A plain reading of our bill shows that each one of these arguments is false.

The bill that came out of our committee goes farther than ever before in providing a meaningful role for the courts and Congress in overseeing acquisitions of foreign intelligence. The FISA Court will review the targeting and minimization procedures to ensure they comply with the law. If the court finds any deficiency, it can order the Government to correct the deficiency or cease the acquisition.

There is nothing—I repeat, nothing—in this bill that will allow warrantless wiretapping of Americans in violation of title III criminal wiretaps or FISA. There are explicit prohibitions against ''reverse targeting'' and the targeting of the person inside the United States without a court order. Americans abroad are given new FISA Court protections. The acquisitions must also comply with the fourth amendment. These are major new protections for Americans. Yet in spite of these measures—protections we have never seen before in the world of foreign targeting—we have been told the intelligence community will still target innocent Americans, listening to calls between parents and children overseas, between students and their friends studying abroad. That is absolute nonsense. The Intelligence Committee's bill only allows targeting of persons outside the United States to obtain foreign intelligence information. This is not a dragnet of surveillance. We are not listening to, quote, completely innocent people overseas, unquote, as some have claimed. The targets must be foreign targets—suspected terrorists or terrorist group members—and the Attorney General and the DNI must certify that a significant purpose of the acquisition is to obtain foreign intelligence information.

For example, if a foreign target is believed to be an agent or member of al-Qaida, then all communications will be intercepted. Only Americans who communicate with that target will have those specific conversations monitored. If those same conversations turn out to be purely innocent, they will be ''minimized,'' or suppressed. Even if the communication contains foreign intelligence information, it is likely, in many instances, the identity of any U.S. person will be masked—or protected—in any intelligence reporting. Americans' privacy rights are protected up to the point where they are actually engaging in a terrorist operation.

Mr. President, I see my time is running out. I will reserve the remainder of my time. I will give the rest of my remarks at a later time.

Thank you.

The ACTING PRESIDENT pro tempore. Who yields time?

Mr. ROCKEFELLER. Mr. President, I yield 7 minutes to the Senator from Wisconsin.

The ACTING PRESIDENT pro tempore. The Senator from Wisconsin.

Mr. FEINGOLD. Mr. President, I thank the chairman of the Intelligence Committee.

The Senate should not be having a cloture vote on this legislation today. What we should be doing is considering and voting on the amendments that I and my colleagues tried to bring up last week, and other amendments that have been proposed to improve this badly flawed bill. But the minority does not think we should have the right to actually legislate here. They expect this body to rubberstamp that bill.

I am afraid I have to say the conduct of the minority has been very disturbing on this. They insisted for weeks that it is absolutely critical to finish the FISA legislation by February 1, even going so far as to object repeatedly to efforts by the majority leader to extend for only 1 month the Protect America Act—a law they rammed through this Chamber in August—and they still don't want to give us another month so the Senate can carefully consider changes to it.

So the majority leader brought to the floor the Intelligence Committee bill, the legislation that the minority wanted to consider and urged the Senate to stay in session through the weekend to complete work on it. I criticized the majority leader for bringing the Intelligence Committee bill to the floor because I thought the Senate should be working from the much better bill reported by the Judiciary Committee, on which I also serve, but I would have thought the minority would be pleased by the majority leader's decision.

So what have they done in response? They have obstructed all efforts to actually work on this bill. They will not allow me to get a vote on the one amendment I have offered—an amendment cosponsored by Senator HAGEL—and they will not allow me or anyone else to offer any other amendments. They filed for cloture the day this Senate began working on the bill, after allowing only a single amendment to be called up. They have effectively halted Senate consideration of this bill, despite the fact they are the ones—they are the ones—who are arguing that the February deadline is so critical. They seem to think that scare tactics peddled by administration officials, such as the Vice President, will be enough to pressure the Senate into letting them have their way. I certainly hope they are wrong.

Mr. President, as you well know, this legislation is in serious need of fixing. It authorizes widespread surveillance involving Americans at home and abroad. Yes, it does. Despite what the Senator from Missouri said, it certainly does do that. I have a number of amendments I want to offer, both to ensure that the FISA Court has more authority to oversee these authorities, and to guarantee Americans their fourth amendment rights. But I cannot even get a vote on the one, simple, straightforward, and extremely modest amendment I offered last week. This demonstrates how brazen these tactics are. This bipartisan amendment would merely require that the Government provide copies of important FISA Court orders and pleadings for review to the committees of jurisdiction in a classified setting, so that Members of Congress can understand how FISA has been interpreted and is being applied. You would think this amendment would be, as they say, a no-brainer, and yet the minority will not even consent to a vote on that.

But at least that one amendment is pending, and we will get a vote eventually. If the Republicans succeed in cutting off debate on this legislation, the Senate will not be able to vote on any other amendments, including the amendment Senator DODD and I wish to offer to deny retroactive immunity to telecom companies that allegedly cooperated with the administration's illegal wiretapping program. It is unconscionable to think that the Senate should have to make a final decision on this legislation without even having an opportunity to debate and vote on whether to grant retroactive immunity to companies that allegedly cooperated with an illegal program.

And why are we in this situation? Because the minority and the administration think they are entitled to ram the deeply flawed Intelligence Committee bill through the Senate without any changes. It seems they are worried the Senate might actually pass some of the very reasonable amendments I and others would like to offer if they give us a chance to do so or perhaps they are trying to sabotage the bill and then figure out a way to blame that outcome on Democrats.

No Senator—no Senator—should go along with these cynical, strong-arm tactics. We have to stand up to the administration and stand up for our rights.

I strongly urge my colleagues to oppose cloture. Invoking cloture on this bill would be an abdication of our responsibility to consider legislation that will have a huge impact on the

American people for years to come. I hope even those who support the Intelligence Committee bill will think twice before voting to make this body a rubberstamp.

I yield the floor.

The ACTING PRESIDENT pro tempore. The Senator from Texas is recognized.

Mr. CORNYN. Mr. President, I don't know why any Member of the Senate would object to procedures we would employ within the bounds of the law to listen to communications of terrorists in order to detect and deter further terrorist attacks on our own soil or against Americans or our allies. That is what this legislation does. Unfortunately, I think we are beginning to see a dangerous trend on the part of the Senate: Never failing to put off until tomorrow what we could and should do today.

This legislation has been considered for an awfully long time, as we all know, in a bipartisan vote of the Senate Intelligence Committee, 13 to 2. In October, this legislation was voted out of the Intelligence Committee in a carefully crafted attempt to consult with the Director of National Intelligence, the head of the Central Intelligence Agency, and all other intelligence community members who might be impacted by this legislation. There has been opportunity after opportunity for input into this legislation by Members of the Senate. Yet we hear today there are those on the floor of the Senate who are saying: Well, let's not vote on this legislation now. Let's kick the ball down the road another month so we can have the same debate, the same discussion we have been having for all those many months leading up to this point. The only reason we are where we are today is because we were unable to get a lengthy extension of the Foreign Intelligence Surveillance Act in August. Because of objections by those on the other side who are complaining about this legislation again today, we were only able to pass this legislation until December and then another extension was granted until February 1, when this Protect America Act expires of its own terms. I would hope this body would continue to act in a strong bipartisan manner in which the Intelligence Committee has voted this bill out of the Intelligence Committee by a vote of 13 to 2.

I appreciate the fact that this body tabled the Judiciary Committee's partisan substitute and sent a signal that bipartisanship and consensus may once again become ascendant in matters of national security in the Senate. I think we would see that as a welcome development. At a time when we are talking about an economic stimulus package and seeing cooperation from the Speaker and the minority leader in the House and the President of the United States on matters affecting the economy, why can't we get that same sort of bipartisan cooperation on matters affecting national security?

Today, the Senate is poised to move this critical national security legislation one step closer to the President's desk. Today's vote will tell us much more about whether this Senate is ready to set aside partisanship and willing to get the job done.

Members of this body will remember that in December we had to pass an Omnibus appropriations bill that affected all discretionary spending of the U.S. Federal Government because we had been unable to pass 11 out of the 12 appropriations bills that it was our responsibility to pass. Unfortunately, this Senate has an unfortunate recent tendency to put off things until tomorrow what we should and could be doing today, and we should not let that happen. We need to finish this legislation to give Members a chance to debate and then to vote.

I don't favor each and every provision included in the bipartisan compromise that is sponsored by Chairman ROCKEFELLER and Vice Chairman BOND, but I do appreciate the fact that it is a carefully crafted compromise. It is a bipartisan compromise. It is the product of extensive consultation and negotiation with the experts in our intelligence and defense communities.

In other words, this legislation reflects the valuable and necessary input of the very men and women who are currently intercepting phone calls, text messages, and e-mails between al-Qaida and their operatives—those who wish to do America and America's interests harm.

The Senate has two choices today as the deadline for action rapidly approaches on February 1. On the one hand, we can show the American people that at least when it comes to matters of national security, it is possible to put partisanship aside and to get the job done in a bipartisan way. The other choice, which the majority leader has proposed, is we ask the American people for an extension, that we kick the can down the road for another month, only to find ourselves back in precisely the same posture we are in today: With no issues resolved and with the same old debates to be rehashed when we ought to finish the job today and follow the path of maximum responsibility.

I ask my colleagues: What excuse could there possibly be to put the tough choices off for another month? What justifies asking the American people for more time to get the job done when we know what the choices are and we have simply to make those choices by our vote today. We have had 6 months since the Protect America Act was passed in August of last year to get the job done. In that time, this legislation has been subjected to scrutiny by two Senate committees, and there has been significant time debating this legislation on the floor.

The fact is there is no acceptable excuse for failing to do our duty and our job. The excuses offered for delay are as compelling as the old school house claim that my dog ate my homework, I couldn't get it done.

I say no more excuses, no more extensions. It is time for Congress to come together in a bipartisan fashion in the national security interests of the United States.

It is specious to say there is no consequence to another extension, and it is the height of irresponsibility to argue that delay is the only responsible choice. As America's elected leaders, we have a responsibility to keep America safe. We cannot simply close our eyes and wish away the terrorist threat. It is easy this many years after September 11 to be lulled into a false sense of security as time takes us further away from that terrible attack on American soil. But it is undeniable that the threat from al-Qaida and Islamic extremists remains.

In the face of the very real threat of radical Islamic terror, Congress must be resolute and we must eschew attempts to split along partisan lines, and we must embrace bipartisan solutions to our very real national security problem. That is what a vote on the Senate Intelligence Committee bill would reflect: a bipartisan solution to a national security challenge.

That is why it defies credibility to argue that the responsible thing to do is to put the job off for another month. The majority leader's plea for an extension implies that the only two choices we have are, on the one hand, an extension for 1 month and, on the other hand, no bill at all. Neither of those is a responsible choice.

In fact, there is a third option, and that option is for the Senate to pass a consensus bill that has the bipartisan support of the chairman and vice chairman of the Intelligence Committee and a bipartisan majority of the Senate, experts in the intelligence community, and the President of the United States.

Let's be clear about what an extension means. An extension means further delay. It means putting off tough choices. It means not only to do so in a time of war but in a time of economic fragility, when we have other work we need to be doing on the floor of the Senate that is being taken up unnecessarily by repeating the same arguments over and over without any conclusion. It also means Congress has lacked the courage to relieve some of America's leading companies from the burdens and costs of litigation arising from their cooperation in the war on terror.

Let us remember the telecommunications companies that may have cooperated with our Government at the request of our President, and upon the certification of the Attorney General, the chief law enforcement officer, that what they were being asked to do was within the law. To continue to subject them to litigation for doing their civic duty, to incur ongoing expense and inconvenience and to risk information that is sensitive to our security coming out during the process is simply not a responsible option.

Some in Congress apparently think these companies should have second-guessed the legal representations made by the President and the Attorney General in the days and weeks and months following the 9/11 attacks. Some in Congress have argued that the companies had a duty not to cooperate, a duty to refuse to assist this Nation's intelligence community with tracking terrorists during wartime. That is, unfortunately, how far we have come in this debate and how off the mark some have come.

These companies, as every good citizen who cooperates with their Government to try to keep America secure in good faith, deserve the protection we are being asked to give them in this legislation. These costly lawsuits have not only put in jeopardy the future cooperation of these firms but also the critical national security concerns potentially exposed to the discovery process in civil litigation. It may be popular in some quarters to bash corporate America, but that rhetoric is sorely misplaced in this debate. The men and women who manage these companies made a good-faith decision to do their patriotic duty—to help their Government to track terrorists and to save American lives, and they should not be punished for it. They should be thanked for their cooperation.

For Congress to allow these burdensome lawsuits to continue this long is unfortunate and unjust indeed, but for Congress to continue to put off the tough choices and leave these companies in legal limbo is not only unfortunate and unjust, it is also irresponsible. Now is the time for Congress to decide the question—no more excuses, no more delays, no more extensions. Today, the Senate can choose a path forward, a bipartisan path on critical national security measures, and I urge all my colleagues on both sides of the aisle to work together to move this bipartisan bill forward by voting for cloture at 4:30.

I yield the floor.

The ACTING PRESIDENT pro tempore. The Senator from Georgia is recognized.

Mr. CHAMBLISS. Mr. President, I rise today in support of cloture on S. 2248, the Foreign Intelligence Surveillance Amendments Act, or FISA Amendments Act. Time is running out on congressional action to fix FISA. The Protect America Act, which Congress passed in August to close gaps in our foreign intelligence collection, expires this Friday, February 1, 2008.

Prior to congressional action in August, our intelligence community was unable to collect vital foreign intelligence without the prior approval of a court. And I emphasize in that ''foreign'' intelligence. This will be the case again if we do not make permanent these changes. Before August, if our intelligence community wanted to direct surveillance at an al-Qaida member located in Pakistan who was communicating with an operative terrorist in Germany, they would have to first petition the FISA Court for approval. In August of this year, our intelligence community told us that without updating FISA, they were not just handicapped, but they were hamstrung.

The Protect America Act temporarily fixed the intelligence community legal gaps. The Director of National Intelligence highlighted some of the critical intelligence gained under the Protect America Act, including: insight and understanding leading to disruption of planned terrorist attacks; efforts of an individual to become a suicide operative; instructions to a foreign terrorist associate about entering the United States; efforts by terrorists to obtain guns and ammunition; terrorist facilitator plans to travel to Europe; identifying information regarding foreign terrorist operatives; plans for future terrorist attacks; and movements of key extremists to abate a risk. With the Protect America Act set to expire, Congress must act swiftly before our core collectors are faced with losing this kind of valuable intelligence as a result of inaction by Congress.

Although the Protect America Act enabled the intelligence community to continue its important work, Congress would be derelict in its duties to merely extend the expiration of this act.

The Senate Intelligence Committee has been reviewing and drafting FISA legislation since April of last year. Last fall, the committee considered and passed the bill that is now before us. In December, the bill came to the Senate floor for consideration, but some of my colleagues on the other side of the aisle delayed its consideration. We are now faced, after almost 10 months of thorough consideration, with the ability to pass legislation which will improve our intelligence collection and which contains safeguards for U.S. citizens' privacy rights that the Protect America Act does not contain.

The FISA Amendments Act contains a clear prohibition against intentionally targeting persons located inside the United States and a prohibition on reverse targeting of U.S. persons, which the Protect America Act does not. The FISA Amendments Act makes clear that the FISA Court approval is required for intentionally targeting U.S. persons abroad and requires that any collection be consistent with the fourth amendment. Most important, the FISA Amendments Act contains retrospective immunity for our telecommunications carriers that may have assisted the Government in protecting American lives.

Extending the Protect America Act does not ensure the continued and necessary cooperation of those who may have assisted the Government with the terrorist surveillance program after September 11.

The Government often needs assistance from the private sector in order to protect our national security. Telecommunications carriers may provide the Government access to communication contents and records pursuant to many Federal processes, including judicial warrants, subpoenas, title III orders, FISA orders, attorney general certifications, administrative subpoenas, national security letters, and other statutory authorizations. In return, they should be able to rely on the Government's assurances that the assistance they provide is lawful and necessary for our national security.

In Smith v. Nixon, the U.S. Court of Appeals for the District of Columbia suggested that the Government's request to wiretap a home telephone was illegal. Yet they dismissed the telephone company from any liability because of the assurances they received from the Government, the reasonable expectation of legality, and their limited technical role in assisting the Government in surveillance initiated by the Government.

As precedence suggests, America's telecommunications carriers should not be subjected to costly legal battles and potentially frivolous cases, yet ones which could expose intelligence sources and methods, harming our national security, merely for their good-faith assistance to the Government. It is necessary and responsible for Congress to provide telecommunications carriers with liability relief.

I urge my colleagues to support cloture on the Rockefeller-Bond substitute amendment and oppose a simple extension of the Protect America Act. Senators ROCKEFELLER and BOND have worked hard and long hours to make sure we got it right in this bill that came out of the Intelligence Committee. After many hours of negotiating, debate, and hard work, it would a shame to see this bill not come to fruition and pass this body at this point in time. Our intelligence community needs the tools and additional safeguards provided in the FISA Amendments Act to keep our people safe, and Congress needs to act quickly before the Protect America Act expires and these tools are taken away.

Mr. BIDEN. Mr. President, I rise today in opposition to the Intelligence Committee's version of the Foreign Intelligence Surveillance Amendments Act of 2007. It is without question that I support giving the administration the surveillance tools it needs to keep us safe. But Congress has both a duty to keep the American people safe and uphold the Constitution.

It is therefore incumbent upon us in the Senate to craft clear legislation that protects both our national security and our civil liberties. We can do that by passing the Judiciary Committee substitute, which gives the administration the tools it needs to collect foreign intelligence and protects innocent Americans by ensuring that the FISA Court, and not the Attorney General, decides whether surveillance of a U.S. person is proper.

One of the defining challenges of our age is to combat international terrorism while maintaining our national values and our commitment to the rule of law and individual rights. These two obligations are not mutually exclusive. Indeed, they reinforce one another. Unfortunately, the President's national security policies have operated at the expense of our civil liberties. The examples are legion, but the issue that prompted the legislation before us today is one of the most notorious—his secret program of eavesdropping on Americans without congressional authorization or a judge's approval.

After insisting for a year that the President was not bound by the Foreign Intelligence Surveillance Act's clear prohibition on warrantless surveillance of Americans, the administration subjected its surveillance program to FISA Court review in January of last year.

Then, last August, citing operational difficulties and heightened threats that required changes to FISA, the administration passed the Protect America Act—over my objection and that of many of my colleagues. The Protect America Act, which sunsets at the end of this month, amended FISA to allow warrantless surveillance, even when that surveillance intercepts the communications of innocent American citizens inside the United States.

The administration identified two problems it faced in conducting electronic surveillance under FISA. First, the administration wanted clarification that it did not need to obtain a FISA warrant in order to conduct surveillance of calls between two parties when both of those parties are overseas. Because of the way global communications are now transmitted, many communications between people all of whom are overseas are nonetheless routed through switching stations inside the United States. In other words, when someone in Islamabad, Pakistan, calls someone in London, that call is likely to be routed through communications switching stations right here in the United States. Congress did not intend FISA to apply to such calls, and I support a legislative fix to clarify that point.

The second problem the administration identified is more difficult. Even assuming that the government does not need a FISA warrant to tap into switching stations here in the United States in order to intercept calls between two people who are abroad—between Pakistan and England, for example—if the target in Pakistan calls someone inside the United States, FISA requires the government to get a warrant, even though the government is ''targeting'' the caller in Pakistan.

The administration wants the flexibility to begin electronic surveillance of a ''target'' abroad without having to get a FISA warrant to account for the possibility that the ''foreign target'' might contact someone in the United States. I agree with the administration's assessment of the problem, but I don't support its solution.

The administration's proposal, which is reflected in the Intelligence Committee's version of the FISA Amendments Act, would significantly expand the scope of surveillance permitted under FISA by exempting entirely any calls to or from the United States, as long as the government is ''targeting'' someone reasonably believed to be located outside the United States.

The government could acquire these communications regardless of whether either party is suspected of any wrongdoing. The Attorney General and the Director of National Intelligence would make the determination about whom to target on their own, and they would merely certify, after-the-fact, to the FISA Court that they had reason to believe the target was outside the United States, regardless of how many calls to innocent American citizens inside the United States were intercepted in the process.

This Intelligence Committee bill authorizes surveillance that is broader than what is necessary to protect national security and that is why I oppose it.

The Intelligence Committee bill offers no protection for the innocent Americans who communicate with overseas relatives, business partners, or friends. Indeed, it allows the government unfettered access to these innocent Americans' communications. And once the government collects these communications, it can share them with other agencies throughout the government.

The Judiciary Committee substitute—which authorizes much broader surveillance powers than the government had under FISA before the Protect America Act became law—offers several significant protections. I will mention a few: First, the Judiciary Substitute protects against the ''bulk collection'' of communications by requiring the government to target a specific person or phone number abroad, rather than allowing the acquisition in bulk the millions of communications going into and out of the United States. Second, it requires the government to obtain an individualized warrant from the FISA Court if the government's acquisition of a person inside the United States becomes a significant purpose of its surveillance of the foreign target. Third, it provides for much more robust and meaningful congressional oversight. And fourth, it does not provide retroactive immunity for the telecommunications carriers.

I oppose granting retroactive immunity because if the carriers violated clearly stated Federal law, they should be held accountable. Cases against the carriers are already making their way through the courts. Retroactive immunity would undermine the judiciary's role as an independent branch of government. Furthermore, the provision that holds carrier liable for violations of the act is an important enforcement mechanism. It is fundamental to securing the privacy rights that FISA was meant to protect.

When the Senate passed FISA, after extensive hearings, 30 years ago by a strong bipartisan vote of 95 to 1, I stated that it ''was a reaffirmation of the principle that it is possible to protect national security and at the same time the Bill of Rights.'' I still believe that's possible, but not if we enact the Intelligence Committee bill.

Mr. President, I yield the floor and suggest the absence of a quorum.

The PRESIDING OFFICER (Mr. CARDIN). The clerk will call the roll.

The legislative clerk proceeded to call the roll.

Mr. CHAMBLISS. Mr. President, I ask unanimous consent that the order for the quorum call be rescinded.

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

Mr. CHAMBLISS. Mr. President, I ask unanimous consent that the time for the quorum we will go into be equally divided between Senators BOND and ROCKEFELLER.

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

Mr. CHAMBLISS. I suggest the absence of a quorum.

The PRESIDING OFFICER. The clerk will call the roll.

The legislative clerk proceeded to call the roll.

Mr. BOND. Mr. President, I ask unanimous consent that the order for the quorum call be rescinded.

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

Mr. BOND. Mr. President, how much time is remaining on our side?

The PRESIDING OFFICER. Twelve and a half minutes.

Mr. BOND. Mr. President, while we are waiting for Members of the other side to come forward, I will make a few remarks, and we will see if we have some others join us.

I was talking about some of the proposed amendments and questions that have arisen about this bill. There are some who would demand that a court order be obtained any time a call involved a U.S. citizen. But anybody who understands FISA or intelligence collection knows that is operationally impossible.

For 30 years, the intelligence community has used minimization procedures when inadvertently intercepted calls come to or from nontargeted U.S. persons. So far, we are totally unaware of any abuses of this system. The minimization procedures have worked well. They worked well when information was being collected by radio, without a FISA Court order, and they continue to work well because the well-trained people who run the NSA operations are overseen by multiple layers of supervisors and inspectors general and attorneys from the Department of Justice.

There is no way to know, when a terror suspect places a call from a location in the Middle East, whether that

person is going to call someone in his country or a neighboring country or the United States. So if you say you cannot intercept that call if it goes to a U.S. person, what, in effect, you are saying is you cannot intercept that call because you don't know where the call is going. So it means there will have to be an order for every foreign terrorist surveillance conducted by the NSA, and that is totally unworkable. We have seen that before. That shut the system down. It is unsound policy to require a FISA Court order if a terrorist target abroad calls a U.S. person. That may be the most important call to intercept in order to protect us from a terrorist attack at any time, and time matters. Do we really mean that the call cannot be intercepted until a court filing is prepared and reviewed by Government lawyers and that the FISA Court must review the application and supporting amendments? I hope not. Our enemies are not stupid. They would figure out very quickly that they can slow us down and bring our intelligence community to a halt simply by placing periodic calls to the United States.

Some believe that the FISA framework in place is enough to keep us safe and that we don't need the Intelligence Committee bill. I find that comment disturbing. It is the FISA framework that created significant intelligence gaps threatening the security of our Nation. It is only because we passed the Protect America Act that those gaps were closed.

I have already spoken about the problems with the Judiciary Committee bill. I wish to address some concerns and some ideas raised about the Foreign Intelligence Surveillance Court, the FISA Court.

I think our bill out of the Intelligence Committee strikes the appropriate balance between providing tools needed to collect intelligence and a meaningful oversight role for Congress and the FISA Court.

There are a lot of misperceptions about the FISA Court. As mentioned previously, for example, there are those who suggest the court should have decided whether providers acted in good faith before immunity is granted. We were told this makes sense because the court ''sits 24/7 and this is all they do. They would act en banc.'' That is not accurate. The FISA Court does not sit 24 hours a day, 7 days a week. It is composed of U.S. judges from U.S. district courts throughout the country who have their own full caseloads and come to Washington, DC, on a rotating basis simply, as the enabling legislation says, to issue FISA Court orders. As a result, it would be difficult to get them to sit together.

Given the court's facilities, it is not set up to preside over litigation. We were told that this is why the FISA Court was set up, but the legislative history and the measures——

The PRESIDING OFFICER. The Chair advises the Senator that he is going into the time reserved for the Republican leader.

Mr. BOND. Mr. President, I will then close and urge that our colleagues adopt cloture so that we may move forward on this very important bill.

I yield the floor.

The PRESIDING OFFICER. The Senator from West Virginia is recognized.

Mr. ROCKEFELLER. Mr. President, how much time remains on our side?

The PRESIDING OFFICER. Nineteen and a half minutes, with 10 minutes reserved for the leader.

Mr. ROCKEFELLER. I yield 9½ minutes to the Senator from Connecticut.

The PRESIDING OFFICER. The Senator from Connecticut is recognized.

Mr. DODD. Mr. President, I thank the manager of the legislation, Senator ROCKEFELLER. Once again, I will say that I have great admiration for the work done by the committee. It is not an easy matter. The Intelligence Committee has serious work to do. Much of what they have done, I agree with. My objections here this afternoon are focused on one aspect of the legislation rather than the cumulative effort the committee has made.

Let me address the issue we will be voting on, and that is cloture. That is a critical issue for all of us.

Aside from the question of whether I agree or disagree with various amendments, or even the bill, we find ourselves in the midst of a parliamentary nightmare. We have been in this position since late last year, going back to December.

So much hinges on this bill. It will set America's terrorist surveillance policy well into the next Presidential term and beyond if a period of 6 years is adopted or even the 4 years suggested by Senator CARDIN and others. Depending on the outcome of the debate, this legislation has the power to bring that surveillance under the rule of law or to confirm the President's urge to be a law of his own. It has the power to bring the facts of warrantless spying to light and to public scrutiny, or to lock down those facts as the property of only the powerful.

It has the power, obviously, to declare the same law applies to all of us regardless of economic circumstances, well connected or not, or to set the precedent that some corporations are far too rich, far too affluent to be sued, that immunity can effectively not be brought against them.

Wherever you come down on these choices—and I know there are those of us who have different opinions—you certainly cannot be neutral, in my view. None of us can be neutral on a matter such as this. This is one of the most important and contentious pieces of legislation we will debate in this session, and I argue any session of Congress, and yet the Senate is frozen today.

I objected passionately to retroactive immunity, but I did not shut out debate. Republicans have frozen this body since debate began, not only last week but going back further, and they unwittingly created a perfect microcosm of retroactive immunity right here in this body. Because both flow from the same impulse: shutting down the organs of Government—in this case, the legislation, the courts, and now, because of the procedural nightmare we find ourselves in, the Senate—when you are afraid, of course, you will not get your way. That is why President Bush wants his favored corporations saved from lawsuits, it appears. That is why the minority party wants this bill saved from any and all amendments, saved from serious and thoughtful discussion.

As a committee chairman myself, as I pointed out the other day, I wish I had the privilege being requested by the minority. I sometimes wished the bills we passed out of committee would have swept out of this body when I came to the Senate floor without a single amendment. That is not how this body works. It was never intended to work that way. It is certainly not the way the Founders intended it to work.

Amendments are not entitled to pass, but they are entitled to a fair hearing, a fair debate, and a fair vote. The minority can object as strenuously as it wants, but it must do so fairly. I accept that principle, even when it does not go my way; even on immunity itself, I understand a minority cannot stand forever. Is it too much for Republicans to extend the same courtesy?

On a bill as important as this one, it would be ridiculous to curtail debate, shut out new ideas, or rush to a conclusion without even extending the Protect America Act for a month to give us the time we need. Whether you agree with them or not—and some I disagree with myself—the amendments offered by my Democratic colleagues are serious proposals and deserving of serious consideration.

Shouldn't we debate whether this new surveillance regime ought to stay inflexible through the next Presidential term and into the one after that?

Shouldn't we debate whether we are going to categorically outlaw unconstitutional reverse targeting or indiscriminate vacuum cleaner bulk collection?

Shouldn't we debate whether Congress even gets to see the secret rulings of the FISA Court?

Those are some of a few of the well-intentioned proposals we need to consider before we vote on this bill. But across the board, the Republican answer to those questions is absolutely not, in every single instance: No debate, no votes. I disagree, and I will vote against cloture because we haven't done our job yet.

I will also vote against cloture because I cannot support the bill as it now stands, as my colleagues know. First, the legislation still contains some egregious provisions for corporate immunity. I already made my objection to immunity many times

over the last number of days. It puts the President's chosen few above the law, in my view; it endorses possibly illegal spying on Americans; and it strikes a harsh blow against the rule of law. I will continue to fight retroactive immunity with all the strength any one Senator can muster.

But I also strongly object to many of the intelligence-gathering portions of the bill, as well as supporting many of them that have been included. This bill reduces court oversight of spying nearly to the point of symbolism. It would allow the targeting of Americans on false pretenses. It opens up new twisted rationales for warrantless wiretapping, which is exactly what it ought to prevent. It could allow bulk collection of communications of millions of Americans as soon as an administration, whether this one or future one, has the wherewithal to build such an enormous dragnet, and it sets all of these deeply flawed provisions in stone for 6 years, depriving us of the flexibility we need to fight terrorism.

For all of those reasons, as well, I will vote against cloture later this afternoon.

Tonight, the President will come to Congress to speak to us and to the American people about the state of our Union. I hope he will use that opportunity to realize the Senate needs more time to do its constitutional duty to debate and consider this important legislation. However, I am concerned that he will instead continue to threaten to veto this legislation unless it includes retroactive immunity for the telecommunications industry.

The President has said this bill is essential to ''protecting the American people from enemies who attacked our country.'' That is a quotation. So why is he trying to stop it? Why is he promising to veto it? Why is he throwing it all away to protect a few corporations from lawsuits?

I fear that if we give this President what he wants, we risk weakening the rule of law and placing the rights of some of the President's favored corporations over the rights of ordinary American citizens.

I hope my colleagues will join with those of us who oppose cloture today on the substitute amendment to allow the Senate the time it needs to debate and improve the FISA Amendments Act. This issue is far too important for the security of our Nation and to our civil liberties to do otherwise.

As we all know, as I have stated over and over, this is historic tension that dates back to the founding of our Republic, of keeping us safe from those who would do us harm, and protecting the rights and liberties of American citizens. It has been a tension that has been debated and argued for more than 200 years, and the adoption of the FISA legislation three decades ago created the means by which that balance could be struck, allowing us to do what is necessary to protect us against those who would do us harm while simultaneously guaranteeing those rights and liberties we enjoy as Americans would be protected in these circumstances.

It is a critical point to maintain that balance. My fear is this legislation, particularly with retroactive immunity, upsets that balance significantly.

As I said before, and I will repeat in closing, had this been a few months, even a year in the wake of 9/11, had this administration had a record of by and large supporting the rule of law, I would not stand here and demand that we not include retroactive immunity under those circumstances. But there has been a pattern of behavior by this administration from the very outset. We now know these warrantless wiretaps began in January or February of 2001, not in the wake of 9/11. So even prior to the tragic events of September 11, 2001, this administration had begun a pattern of seeking warrantless wiretaps on average American citizens without the court orders provided for under the Foreign Intelligence Surveillance Act. Of course, it went on for 5 years and would still be ongoing were it not for a whistleblower in a report in a major American newspaper uncovering this program.

This went on for 5 long years amidst a pattern of behavior by this administration. I do not think I need to necessarily enumerate the examples of that pattern, beginning with Abu Ghraib, secret prisons and rendition, habeas corpus, the U.S. Attorney's Office, and the list goes on and on. I cannot undo those mistakes, but they are more than just mistakes. They are tragic examples of this administration's trampling all over the rule of law. What we can do this evening and what we can do in the coming days, collectively, Democrats and Republicans, is pass a FISA bill, much of which is included in the work of Senator ROCKEFELLER and Senator BOND. There will be some objections, obviously, to some amendments that will be offered, but to get our work done, pass this legislation, and move on to other business. The issues are far too important to leave them otherwise.

I thank, again, Senator ROCKEFELLER for giving me some time and urge our colleagues to vote against the cloture motion when that moment occurs.

I yield the floor.

The PRESIDING OFFICER. Who yields time? The Senator from West Virginia.

Mr. ROCKEFELLER. I suggest the absence of a quorum.

The PRESIDING OFFICER. The clerk will call the roll.

The assistant legislative clerk proceeded to call the roll.

Mr. MCCONNELL. Mr. President, I ask unanimous consent that the order for the quorum call be rescinded.

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

The Republican leader is recognized.

Mr. MCCONNELL. Mr. President, we are now only a few days away from the expiration of the Protect America Act, days away from a situation in which the intelligence community will be unable to freely monitor new terrorist targets overseas. We are flirting with disaster, and the American people deserve to know how we got in this predicament. So let me review it.

Ten months ago, the Director of National Intelligence asked us to reform the Foreign Intelligence Surveillance Act. Our friends on the other side waited until July to take up a bill that agreed with his recommendations. It was not until August that Congress finally answered his pleas by authorizing for 6 months the overseas surveillance of foreign terrorist targets with the Protect America Act.

When our friends on the other side got back from the August break, they vowed to quickly address what they decried as the shortcomings of the Protect America Act.

The Senate Intelligence Committee, under the leadership of Senator ROCKEFELLER and Senator BOND, took up the task. Reforming FISA was complicated and demanding work, but the committee members came together, as they were intended to, along with the executive branch, which, of course, was necessary.

Everyone involved acted with determination, deliberation, and considerable skill. The process lasted 4 months. It involved numerous hearings, briefings, and negotiation sessions. The final product was a model of bipartisanship and accommodation across the Senate aisle and with the White House. The committee vote was not 15 to 0, but around here 13 to 2 is almost as impressive.

But what was perhaps even more impressive is the fact that such a broad coalition of players had come together to meet the minimum standards required of any legislation that replaces the Protect America Act, something that allows the intelligence community to operate without unreasonable and counterproductive restrictions, which protect phone carriers from frivolous lawsuits for helping the Government hunt for terrorists, and which is guaranteed to be signed into law. All of those things are contained in the Bond-Rockefeller, Rockefeller-Bond proposal.

Unfortunately, it was not until just before the Christmas break that our friends decided to even turn back to this vital issue, and even then we had to listen to a filibuster against FISA reform. Then when we began this session, our Democratic colleagues delayed consideration of FISA reform again by moving to the Indian health care bill instead.

So here we are, once again, pushed up against a looming deadline. During last week's consideration of the FISA reauthorization, the majority said it would not consider a 60-vote threshold for votes. It did not offer time agreements, nor did it make any effort to limit the number of amendments.

In short, the Senate faces a legislative logjam that ensures that we will

let the February 1 deadline come and go without making a reasonable effort to enact a law.

It should not have turned out this way. The administration negotiated in good faith with the Democratic majority on the committee that has the technical, operational expertise to handle the subject. And in the course of painstaking negotiations, the administration made tough concessions to our Democratic colleagues. It did this in order to arrive at a fair, bipartisan result that would allow it to continue to protect the homeland. Now that work is being brushed aside.

The menu of amendments to the Intelligence Committee bill is little more than an effort to renegotiate this hard-won deal, an effort to deconstruct the bipartisan Intelligence Committee bill, and reconstruct, amendment by amendment, the divisive Judiciary Committee bill that was tabled by a strong bipartisan majority. That bill will not—I repeat, will not—become law.

Reconstructing the Judiciary Committee bill is a pointless exercise. And with only 5 days until the Protect America Act expires, it is an exercise in which we do not have the luxury to engage.

We can get serious and pass the bipartisan Intelligence Committee product or we can waste time on voting for poison pill amendments that weaken the bill and that will prevent it from becoming law.

I urge our colleagues to make the right choice, to vote for cloture so that we can continue to protect the homeland and against cloture on the 30-day extension. We cannot delay this important legislation for another month. Of course, the President will not sign a 30-day extension.

That said, if we cannot complete this bill, Republicans will not allow this critical program to expire and will offer a short-term extension, if necessary.

To be perfectly clear, I urge that there be a ''yes'' vote on cloture on the bill, a ''no'' vote on cloture on the 30-day extension, an amendment to the bill which actually would not achieve a 30-day extension anyway but I think is a place that we do not want to go on record as having supported because the President will not sign that anyway. And in the next few days, we will consider what kind of short-term options might be appropriate to let us get back to this very important legislation so painstakingly put together by the expert leadership of Senator ROCKEFELLER and Senator BOND.

I yield the floor.

Mr. ROCKEFELLER. Mr. President, I suggest the absence of a quorum, and I ask that the time involved be divided between the two sides.

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

The clerk will call the roll.

The assistant legislative clerk proceeded to call the roll.

Mr. REID. Mr. President, I ask unanimous consent that the order for the quorum call be rescinded.

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

Mr. REID. Mr. President, I apologize to my friends for keeping everyone waiting. It hasn't been long—a matter of a minute or so.

In a few hours, President Bush will stand across the way in the House Chamber and deliver his final State of the Union Address. This will be his eighth State of the Union Address. From what I have heard earlier today in my meetings with the press who met with him, it is a fair bet in this speech that he will continue the drumbeat started by Vice President CHENEY last week by trying to scare the American people into believing that if he does not get his way on the FISA bill now before us, America's national security will be gravely jeopardized.

I have said on more than one occasion in recent days we face a faltering economy here at home and a failing foreign policy abroad. So I call upon all of us, Democrats and Republicans, to rise above partisanship. I have also said on more than one occasion that we extend our hand to the President and congressional Republicans and ask them to join with us in a genuine spirit of bipartisanship. In my nearly 26 years, I have never seen anything quite as cynical and counterproductive as the Republican approach to FISA.

I gave the example in my last statement that it was a Catch-22 the President has put us in. The American people deserve to know when President Bush talks about the foreign intelligence legislation tonight that he is doing little more than shooting for cheap political points, and we should reject any statements he makes about this. Members of Congress from both parties have legitimate policy disagreements on FISA—both parties. Some of us believe that history proves the need for more protections against Government abuse. Others support the law the way it stands. Now, that is appropriate; people have different views and opinions on an important part of our legislation and our laws in the country. But all of us, Members of Congress, Democrats and Republicans, want to wage an effective fight against terror. All of us, Democrats and Republicans, want to give our intelligence professionals the tools they need to win this fight against terror.

We will be taking two votes. The first is on whether to invoke cloture on the Bond-Rockefeller substitute to the FISA bill we have on the floor. The second is a substitute, on whether to extend the authorities of the Protect America Act for another 30 days while Congress works to pass a new FISA bill.

I will oppose cloture on the substitute and support cloture on the extension. The extension will give the Congress time to debate and pass a long-term bill that protects America without compromising the privacy of law-abiding Americans. Both the Intelligence Committee bill and the Judiciary Committee bill authorize the same surveillance tools our intelligence community needs. Democrats and Republicans stand together in all the terrorism fighting components of this bill. Some Democrats, including me, support the additional privacy protections in the Judiciary Committee bill. Others are satisfied with the protections in the Intelligence Committee bill.

Again, people are entitled to their opinions, but all of us believe the Senate should have an opportunity to vote on these important questions.

There was a nice piece written in one of the op-eds today talking about how the Republicans have talked a long time about all we want is an up-or-down vote. Well, if there were ever a time they should follow their own advice it is now—an up-or-down vote.

Many Democrats, including Chairman ROCKEFELLER, who has worked so hard, are going to oppose cloture on the substitute because they object—we object—to the heavy-handed tactics we saw with this legislation this past week. The Republican leader filed cloture on this bill after we had been on the floor for a few hours. Cloture was filed after Republicans blocked every amendment—every amendment—from being offered and blocked all amendments from getting votes. In simple terms, this means the Republicans were filibustering their own bill—their own legislation. Let me repeat that. The Republicans were filibustering their own legislation. In my time in the Senate, I can't remember this taking place.

Meanwhile, at the other end of Pennsylvania Avenue, President Bush has actually threatened to veto a temporary extension. Talk about trying to figure out what is in the mind of someone who is talking that way. Let us remember, a temporary extension would guarantee that all the terrorism fighting tools remain in effect. There is absolutely no policy or security problem with an extension. All it would do is give us more time to work this out on an uninterrupted basis. There is no reason to vote against an extension or for the President to veto one, except for political posturing.

None of us want the current law to expire. None of us want that to expire, except CHENEY and Bush. But if it does expire because of Republican tactics, surveillance will not end. Even if they stop us from extending the bill, it would not end. Surveillance would not end. All surveillance orders issued under the law we passed last August—the Protect America Act—are effective for a year, so they will continue until at least August of 2008—August of this year.

Even in a last resort—if the current law expires—our intelligence professionals can get surveillance orders under the FISA law as it has existed

for decades, before we passed the Protect America Act last August. FISA includes provisions for emergency warrantless surveillance, and it always has. Again, no one is arguing the law should be allowed to expire. Doing so would send the wrong message. But it still is going to allow the collection of this information. The safeguards in place ensure that our war on terror will not be adversely affected, and anyone who says otherwise—from the President on down—is not being truthful.

Why do Democrats seek an extension? We believe bipartisanship is appropriate when possible. The economic stimulus package shows us that when circumstances are difficult, we can work together. The Republican leadership's actions in this FISA debate have not given us reason for confidence that they are interested in working with us, but we owe it to the American people to give them every opportunity to do so.

We have requested a 30-day extension repeatedly—I have done it repeatedly—and each time the Republicans have said no. Compromise is a two-way street. Bipartisanship is a two-way street. As I said last week, we are willing to pass an extension of current law for 2 weeks, 30 days, 18 months, 14 months, 15 months or whatever our colleagues want, but we need to pass an extension now if we are to ensure the law doesn't expire. I have explained if it expires what happens.

The House is going out of session shortly. They have a retreat this week—after tomorrow. Already Democrats have introduced several amendments to strengthen the bill. Senator FEINGOLD sought a vote on his amendment to provide FISA Court documents to the Senate Intelligence Committee. Republicans blocked that. Senator WHITEHOUSE sought to offer an amendment to give the FISA Court authority to review compliance with minimization rules to protect the privacy of Americans whose communications are inadvertently intercepted. We were blocked from having that vote. Senator CARDIN sought to offer an amendment to sunset the legislation in 4 years rather than 6 years. Even that was blocked from having a vote. Senator KENNEDY offered an amendment—or I should say tried to offer one—providing for a report by the inspectors general of the relevant agencies to review the conduct of these programs in the past. No vote on that either. Senator FEINSTEIN sought to offer an amendment making crystal clear that FISA is the exclusive means by which the executive branch may conduct surveillance. Blocked by the Republicans.

Whether these amendments pass or not, we should be allowed to have votes on them. Senator FEINGOLD wasn't saying he wanted to talk for 2 hours. Senator FEINSTEIN wasn't saying she wanted to talk a long time. No one was—a short debate and have a vote on them. We were prevented from doing that.

So what does the Senate do? We take up bills all the time reported to us by committees. This is a little more complicated because we had two committees. It is not often we have concurrent jurisdiction, but there was here. But an eighth grade student could figure out what it is all about. It is not that difficult. Senators offer amendments to these bills and we let the Senate work its will. I don't understand how the Republicans can expect to block us from voting on any amendments and expect us to follow along. Senators are entitled to vote on their amendments.

Now, if someone is stalling—and we all went through that—there comes a time when you shut off the debate. But there is none of that here. With the Republicans blocking the amendments I have talked about, we haven't gotten to the crucial issue of immunity.

Mr. President, I will use my leader time now.

Let us not forget: The question of retroactive immunity wouldn't be before us if President Bush hadn't ignored Congress and established his own process outside the law. But far from taking responsibility for his actions, the President bullies and threatens the Congress he is supposed to be working with. He is similar to the kid in the school yard, the bully who says: OK, you are not doing what I want to do, so I am taking my ball home and none of us will be able to play.

When the President talks tonight about how important this program is and how it must continue, I say to him now that he must consider and reconsider his political posturing and ask his colleagues in the Senate to support an extension, especially when he is going to come and say how much he wants to work on a bipartisan basis.

We are a deliberative body. It was set up that way by the Founding Fathers. Let us deliberate. I urge my colleagues to oppose cloture on the substitute so the Senate can return to considering this bill. We must pass a bill that gives our intelligence authorities the tools they need while protecting the privacy of all Americans. I urge my colleagues to support the extension so we can ensure current authority doesn't expire while Congress works to pass a new and stronger FISA bill.

CLOTURE MOTION

The PRESIDING OFFICER. Under the previous order, and pursuant to rule XXII, the Chair lays before the Senate the following cloture motion which the clerk will report.

The assistant legislative clerk read as follows:

CLOTURE MOTION

We, the undersigned Senators, in accordance with the provisions of rule XXII of the Standing Rules of the Senate, do hereby move to bring to a close debate on the pending substitute amendment to S. 2248, Foreign Intelligence Surveillance Act of 1978 Amendments Act of 2007.

Mitch McConnell, Christopher S. Bond, Kay Bailey Hutchison, Wayne Allard, Jon Kyl, Robert F. Bennett, Sam Brownback, John Thune, Pat Roberts, John Barrasso, Chuck Grassley, Johnny Isakson, Lamar Alexander, Gordon H. Smith, Tom Coburn, Jim DeMint, Richard Burr.

Mr. REID. Mr. President, I ask unanimous consent that the second vote be of 10 minutes duration.

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

By unanimous consent, the mandatory quorum call has been waived.

The question is, Is it the sense of the Senate that debate on amendment No. 3911, offered by the Senator from West Virginia, Mr. ROCKEFELLER, and the Senator from Missouri, Mr. BOND, to S. 2248, a bill to amend the Foreign Intelligence Surveillance Act of 1978, to modernize and streamline the provisions of that Act, and for other purposes, shall be brought to a close?

The yeas and nays are mandatory under the rule.

The clerk will call the roll.

The assistant legislative clerk called the roll.

Mr. DURBIN. I announce that the Senator from Iowa (Mr. HARKIN), the Senator from Connecticut (Mr. LIEBERMAN), and the Senator from Florida (Mr. NELSON) are necessarily absent.

I further announce that, if present and voting, the Senator from Iowa (Mr. HARKIN) would vote ''nay.''

Mr. KYL. The following Senators are necessarily absent: the Senator from Oklahoma (Mr. COBURN), the Senator from North Carolina (Mrs. DOLE), the Senator from Nevada (Mr. ENSIGN), and the Senator from Arizona (Mr. MCCAIN).

Further, if present and voting, the Senator from North Carolina (Mrs. DOLE) would have voted ''yea.''

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

The yeas and nays resulted—yeas 48, nays 45, as follows:

[Rollcall Vote No. 3 Leg.]

YEAS—48

Alexander	DeMint	McConnell
Allard	Domenici	Murkowski
Barrasso	Enzi	Nelson (NE)
Bennett	Graham	Pryor
Bond	Grassley	Roberts
Brownback	Gregg	Sessions
Bunning	Hagel	Shelby
Burr	Hatch	Smith
Chambliss	Hutchison	Snowe
Cochran	Inhofe	Stevens
Coleman	Isakson	Sununu
Collins	Kyl	Thune
Corker	Landrieu	Vitter
Cornyn	Lincoln	Voinovich
Craig	Lugar	Warner
Crapo	Martinez	Wicker

NAYS—45

Akaka	Dodd	McCaskill
Baucus	Dorgan	Menendez
Bayh	Durbin	Mikulski
Biden	Feingold	Murray
Bingaman	Feinstein	Obama
Boxer	Inouye	Reed
Brown	Johnson	Reid
Byrd	Kennedy	Rockefeller
Cantwell	Kerry	Salazar
Cardin	Klobuchar	Sanders
Carper	Kohl	Schumer
Casey	Lautenberg	
Clinton	Leahy	
Conrad	Levin	

Specter	Tester	Whitehouse
Stabenow	Webb	Wyden

NOT VOTING—7

Coburn	Harkin	Nelson (FL)
Dole	Lieberman	
Ensign	McCain	

The PRESIDING OFFICER. On this vote, the yeas are 48, the nays are 45. Three-fifths of the Senators duly chosen and sworn not having voted in the affirmative, the motion is rejected.

The Republican leader.

Mr. MCCONNELL. Mr. President, I wanted to take a moment to explain the next vote. The President indicated over the weekend that he would veto a 30-day extension. We have been dealing with this issue for almost a year. We have in the Rockefeller-Bond proposal a bipartisan compromise that came out of Intelligence 13 to 2. There is no need for a 30-day extension. But even if there were, you wouldn't get a 30-day extension by adding it to this bill. It is extremely important to oppose the 30-day extension. We know it won't become law on this bill. It wouldn't become law if it were passed free-standing, because the President would veto it. We may be talking about a very short-term extension here in the next few days, but we are still on FISA after today. We will not get off FISA until we make some determination of how we are going to dispose of this important measure.

I urge all my colleagues to vote against cloture on the 30-day extension amendment.

The PRESIDING OFFICER. The Democratic leader.

Mr. REID. Mr. President, we all acknowledge the Intelligence Committee did a good job on this piece of legislation. But the Intelligence Committee knew, everyone knew, there was concurrent referral of this legislation. It was always anticipated and believed, rightfully so, that the Judiciary Committee would take up this matter. And they did. They made some suggestions in the way of changes. We are entitled to vote on those. That is all we are asking. That isn't too unreasonable. For the President to not agree to any extension is unreasonable. The House is going to pass a 30-day extension in the morning. They are going to pass that. We are going to have the opportunity to vote on a 30-day extension. This would send an appropriate message to everyone that a 30-day extension is fair and reasonable. As I said in my remarks before the last vote, people are crying wolf a little too often. This legislation we have before us, if it doesn't pass, the work done by the Intelligence Committee and the Judiciary Committee will go for naught. But still, under the legislation we passed previously, the legislation will still be in effect. FISA is not gone. We all want to work to improve this. That is what this is all about. But we need some votes to do that. That is what we are asking.

Everyone here should understand, if you are voting today not to extend this legislation for 30 days, you are going to have to vote on it in the near future because the House is sending us the exact same measure tomorrow.

CLOTURE MOTION

The PRESIDING OFFICER. Under the previous order, pursuant to rule XXII, the clerk will report the motion to invoke cloture.

The assistant legislative clerk read as follows:

CLOTURE MOTION

We, the undersigned Senators, in accordance with the provisions of rule XXII of the Standing Rules of the Senate, do hereby move to bring to a close debate on the Reid amendment No. 3918 to S. 2248.

John D. Rockefeller, IV, Dianne Feinstein, Jeff Bingaman, Debbie Stabenow, Sheldon Whitehouse, Daniel K. Inouye, Charles E. Schumer, Thomas R. Carper, Bill Nelson, E. Benjamin Nelson, Frank R. Lautenberg, Richard Durbin, Ken Salazar, Tom Harkin, Sherrod Brown, Harry Reid.

The PRESIDING OFFICER. By unanimous consent, the mandatory quorum call is waived.

The question is, is it the sense of the Senate that debate on amendment No. 3918, offered by the Senator from Nevada, Mr. REID, to S. 2248, a bill to amend the Foreign Intelligence Surveillance Act of 1978, to modernize and streamline the provisions of that act, and for other purposes, shall be brought to a close.

The yeas and nays are mandatory under the rule.

The clerk will call the roll.

The legislative clerk called the roll.

Mr. DURBIN. I announce that the Senator from Iowa (Mr. HARKIN), the Senator from Connecticut (Mr. LIEBERMAN), and the Senator from Florida (Mr. NELSON) are necessarily absent.

I further announce that, if present and voting, the Senator from Iowa (Mr. HARKIN) would vote ''yea.''

Mr. KYL. The following Senators are necessarily absent: the Senator from Oklahoma (Mr. COBURN), the Senator from North Carolina (Mrs. DOLE), the Senator from Nevada (Mr. ENSIGN), and the Senator from Arizona (Mr. MCCAIN).

Further, if present and voting, the Senator from North Carolina (Mrs. DOLE) would have voted ''nay.''

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

The yeas and nays resulted—yeas 48, nays 45, as follows:

[Rollcall Vote No. 4 Leg.]

YEAS—48

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

NAYS—45

Alexander	Crapo	McConnell
Allard	DeMint	Murkowski
Barrasso	Domenici	Roberts
Bennett	Enzi	Sessions
Bond	Graham	Shelby
Brownback	Grassley	Smith
Bunning	Gregg	Snowe
Burr	Hagel	Specter
Chambliss	Hatch	Stevens
Cochran	Hutchison	Sununu
Coleman	Inhofe	Thune
Collins	Isakson	Vitter
Corker	Kyl	Voinovich
Cornyn	Lugar	Warner
Craig	Martinez	Wicker

NOT VOTING—7

Coburn	Harkin	Nelson (FL)
Dole	Lieberman	
Ensign	McCain	

The PRESIDING OFFICER. On this vote, the yeas are 48, the nays are 45. Three-fifths of the Senators duly chosen and sworn not having voted in the affirmative, the motion is rejected.

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

Mr. BOND. I move to lay that motion on the table.

The motion to lay on the table was agreed to.

MORNING BUSINESS

HONORING OUR ARMED FORCES

SERGEANT JON MICHAEL SCHOOLCRAFT, III

Mr. BAYH. Mr. President, I rise today with a heavy heart and deep sense of gratitude to honor the life of a brave soldier. SGT Jon Michael Schoolcraft, III, 26 years old, died January 19 in Taji, Iraq. Sergeant Schoolcraft died of injuries he sustained when an improvised explosive device detonated near his vehicle. With an optimistic future before him, Jon risked everything to fight for the values Americans hold close to our hearts, in a land halfway around the world.

Jon Schoolcraft, called Mike by his friends, graduated from Wapakoneta High School in Ohio in 2001. Growing up in Ohio with his mother, Cindy Schoolcraft-Hooker, Mike also spent time in Madison, IN, visiting his father, Mike Schoolcraft, Jr. Mike excelled at sports and particularly enjoyed skateboarding. His sense of duty to his country and a desire to see the world drove him to enroll in the Army's Delayed Entry Program while in high school.

After serving a first tour in Iraq, Mike reenlisted, telling a friend that he could not imagine doing anything other than being a soldier. In November of last year, Mike married his wife Amber and decided that his next tour in Iraq would be his last so they could begin a family. Mike was assigned to C Company, 1st Battalion, 27th Infantry Regiment, 25th Infantry Division in Schofield Barracks, HI. For his extraordinary service, Mike was posthumously awarded the Purple Heart.

Today, I join Mike's family and friends in mourning his death. While