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Madam President—I agree with these distinguished gentlemen.

Bottom line, companies who participate in this program do so voluntarily to help America preserve its freedom and security. And that security will ensure for the very safety—both individually and collectively—of its citizens.

In closing, I would like to state that I have long supported the idea of “an all-volunteer force” for our military and I believe “an all-volunteer force” of citizens and businesses who do their part to protect our great Nation from harm is equally important.

Without this retroactive liability provision, I believe companies will no longer voluntarily participate. This will result in a degradation of America's ability to protect its citizens.

It is for these reasons that I urge my colleagues to support the Rockefeller-Bond substitute amendment to grant the men and women of the intelligence community the tools they need to protect our country.

EXHIBIT 1

[From The Wall Street Journal, Oct. 31, 2007]

SURVEILLANCE SANITY

(By Benjamin Civiletti, Dick Thornburgh and William Webster)

Following the terrorist attacks of Sept. 11, 2001, President Bush authorized the National Security Agency to target al Qaeda communications into and out of the country. Mr. Bush concluded that this was essential for protecting the country, that using the Foreign Intelligence Surveillance Act would not permit the necessary speed and agility, and that he had the constitutional power to authorize such surveillance without court orders to defend the country.

Since the program became public in 2006, Congress has been asserting appropriate oversight. Few of those who learned the details of the program have criticized its necessity. Instead, critics argued that if the president found FISA inadequate, he should have gone to Congress and gotten the changes necessary to allow the program to proceed under court orders. That process is now underway. The administration has brought the program under FISA, and the Senate Intelligence Committee recently reported out a bill with a strong bipartisan majority of 13-2, that would make the changes to FISA needed for the program to continue. This bill is now being considered by the Senate Judiciary Committee.

Public disclosure of the NSA program also brought a flood of class-action lawsuits seeking to impose massive liability on phone companies for allegedly answering the government's call for help. The Intelligence Committee has reviewed the program and has concluded that the companies deserve targeted protection from these suits. The

protection would extend only to activities undertaken after 9/11 until the beginning of 2007, authorized by the president to defend the country from further terrorist attack, and pursuant to written assurances from the government that the activities were both authorized by the president and legal.

We agree with the committee. Dragging phone companies through protracted litigation would not only be unfair, but it would deter other companies and private citizens from responding in terrorist emergencies whenever there may be uncertainty or legal risk.

The government alone cannot protect us from the threats we face today. We must have the help of all our citizens. There will be times when the lives of thousands of Americans will depend on whether corporations such as airlines or banks are willing to lend assistance. If we do not treat companies fairly when they respond to assurances from the highest levels of the government that their help is legal and essential for saving lives, then we will be radically reducing our society's capacity to defend itself.

This concern is particularly acute for our nation's telecommunications companies. America's front line of defense against terrorist attack is communications intelligence. When Americans put their loved ones on planes, send their children to school, or ride through tunnels and over bridges, they are counting on the “early warning” system of communications intelligence for their safety. Communications technology has become so complex that our country needs the voluntary cooperation of the companies. Without it, our intelligence efforts will be gravely damaged.

Whether the government has acted properly is a different question from whether a private person has acted properly in responding to the government's call for help. From its earliest days, the common law recognized that when a public official calls on a citizen to help protect the community in an emergency, the person has a duty to help and should be immune from being hauled into court unless it was clear beyond doubt that the public official was acting illegally. Because a private person cannot have all the information necessary to assess the propriety of the government's actions, he must be able to rely on official assurances about need and legality. Immunity is designed to avoid the burden of protracted litigation, because the prospect of such litigation itself is enough to deter citizens from providing critically needed assistance.

As the Intelligence Committee found, the companies clearly acted in “good faith.” The situation is one in which immunity has traditionally been applied, and thus protection from this litigation is justified.

First, the circumstances clearly showed that there was a bona fide threat to “national security.” We had suffered the most devastating attacks in our history, and Congress had declared the attacks “continue to pose an unusual and extraordinary threat” to the country. It would have been entirely reasonable for the companies to credit government representations that the nation faced grave and immediate threat and that their help was needed to protect American lives.

Second, the bill's protections only apply if assistance was given in response to the president's personal authorization, communicated in writing along with assurances of legality. That is more than is required by FISA, which contains a safe-harbor authorizing assistance based solely on a certification by the attorney general, his designee, or a host of more junior law enforcement officials that no warrant is required.

Third, the ultimate legal issue—whether the president was acting within his constitu-

tional powers—is not the kind of question a private party can definitively determine. The companies were not in a position to say that the government was definitely wrong.

Prior to FISA's 1978 enactment, numerous federal courts took it for granted that the president has constitutional power to conduct warrantless surveillance to protect the nation's security. In 2002, the FISA Court of Review, while not dealing directly with the NSA program, stated that FISA could not limit the president's constitutional powers. Given this, it cannot be said that the companies acted in bad faith in relying on the government's assurances of legality.

For hundreds of years our legal system has operated under the premise that, in a public emergency, we want private citizens to respond to the government's call for help unless the citizen knows for sure that the government is acting illegally. If Congress does not act now, it would be basically saying that private citizens should only help when they are absolutely certain that all the government's actions are legal. Given the threats we face in today's world, this would be a perilous policy.

Mr. WARNER. Madam President, I yield the floor at this time.

The PRESIDING OFFICER. The Senator from North Dakota.

Mr. DORGAN. Madam President, are we in morning business?

The PRESIDING OFFICER. We are.

Mr. DORGAN. Madam President, I ask unanimous consent that I be allowed to speak for such time as I may consume.

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

STIMULUS PACKAGE

Mr. DORGAN. Madam President, we will have a piece of legislation come to the floor, we believe tonight—and perhaps tomorrow morning—that deals with the economic stimulus package, as it is called, to try to stimulate the economy. We are either in a recession or near a recession.

The Federal Reserve Board today took additional action to cut interest rates by another half of 1 percent. That follows the three-quarters of 1 percent cut recently by the Fed, within the last week and a half. So the Federal Reserve Board is using monetary policy tools to jump-start the economy, and the thought was that the fiscal policy side coming from the Congress and the President would require—or recommend, at least—some kind of stimulus package. So there is a stimulus package being developed that would provide payments—rebates of sorts—to American taxpayers. The discussion in the U.S. House is \$600 per taxpayer. The Senate bill that has been proposed is \$500 or \$1,000 per couple.

One can make a number of observations about this, wondering about the advantage and the importance of a fiscal policy that has a stimulus package. I think it is probably necessary for psychological reasons, if not for economic reasons. It is about 1 percent of the GDP that is being proposed. We have a \$13-plus trillion economy, and I don't know how about 1 percent of that—\$130 billion, \$150 billion—for a stimulus

package is going to stimulate the economy so much, but I think it is probably psychologically important that we do something here, so I expect to support it.

There are a couple of things I intend to recommend. And I don't know how many amendments we will be moving on this bill, and I don't know what the circumstances might be. I know the bill will be brought to the floor with an unending appetite for amendments, so I understand and expect that we will have to limit some amendments. I want to suggest, however, two amendments that I think have some merit and that ought to be considered.

The first one ought to be really easy, in my judgment. The first one is a message we should put on every check that goes out. If we are sending checks to American taxpayers, we ought to have on this check this statement, in my judgment: "Support our economy—buy American."

Now, why is that the case? Well, because of the trade deficit we have in this country. You will see the hemorrhaging of red ink as a result of our trade deficits year after year. They have grown unbelievably. We now have roughly an \$800 billion trade deficit in a year. We have so much in consumer goods that are being purchased from overseas, with cheap labor overseas, and being brought to the big box retailers in our country and purchased by American consumers. So the proposition of sending a rebate to American taxpayers, \$500 or \$600 per taxpayer, the purpose of which is to have them spend that and to boost consumer spending and, therefore, boost the economy—it does not do much to boost our economy if, in fact, we are providing a rebate, a check to taxpayers, and they spend it on imported goods. In my judgment, that is supporting foreign labor, not American labor.

This is American money spent in a way that is designed to boost the economy, and so it seems to me it ought to be sent with a check that reminds Americans: Support our economy—buy American. We are going to send, what, probably 150 million checks out in the coming months with the stimulus package? Why not have 150 million messages just to remind people, to the extent they can, that it is very important to buy American, because we are trying to stimulate the American economy, not the Chinese economy, not the Japanese economy, and not the European economy. We are trying to stimulate the American economy. So it would be very helpful if they pay a bit of attention to the notion of what this money is about: Support our economy—buy American.

I hope there isn't one person in this Chamber who would object to that. It won't cost anything. This would add no cost to the check that is to be printed, and it seems to me an important and timely message to American consumers. To the extent they can and to the extent they will, they should be re-

minded that spending these funds in support of the product of American workers is what invests in and expands opportunity in the American economy. That is an amendment which I think should be added. I hope it will be added by unanimous consent, absent a managers' package. It is something that should be easy to do, and I would suspect no one would object to the message: Support our economy—buy American.

Second, I wanted to make a point about another amendment that I think should be included. I think this is more problematic at this point, but it is a piece of legislation I will introduce as well.

Part of the economic difficulty in our country is the substantial runup in the price of oil and gasoline. It is interesting to me that even as we have seen the price of oil go up, up, up, we see that the Energy Department continues to put oil underground; that is, we receive royalties from certain oil wells, and they take those royalties in kind—that is, they take the royalties in the form of barrels of oil and they stick it underground in the Strategic Petroleum Reserve.

Well, the Strategic Petroleum Reserve is now about 97 percent full. Even though it is 97 percent full and the price of oil has gone to \$80, \$90, and then \$100, we are still taking oil and putting it underground. What that does is it takes oil out of supply and puts upward pressure on prices. It seems to me we ought to at least take a holiday during this calendar year, as long as oil is above \$100 barrel. Why would you go into the market to purchase very high-cost oil and take it off the market and stick it underground? That puts upward pressure on gas prices, and it makes no sense for the Government to be doing that given the fact the Strategic Petroleum Reserve is now 97 percent filled.

So I hope—and I have encouraged the Energy Secretary to do this, but he has resisted. So my hope will be that either now or at some point in the future on some appropriate occasion, the Congress will decide to tell him: Do not be buying oil at these prices, taking it off the market and putting it underground. By "buying it," I mean taking it as royalty in kind. That makes no sense to do that. You talk about stimulating the economy, the way to stimulate the economy is to help bring some of these energy costs down.

Now about 8.5 million barrels have gone underground in the last 6 months. Some will say: Well, that is a pretty small part of the amount of oil we have and the amount of oil we use. Well, we held a joint hearing between the Energy Committee and the Homeland Government Affairs Subcommittee on the issue of energy markets, and particularly oil markets. At that hearing we heard from Dr. Phillip Verleger, who is an investigative researcher and energy expert. He pointed out that even a seemingly small decision with

this issue of putting oil back into the SPRO at a time when we are short can have significant consequences. He says the DOE is taking what is highly sought after, light sweet crude that is needed right now, and putting that underground in the petroleum reserve. He pointed out the volume of light sweet crude that they want to put into the Strategic Petroleum Reserve underground has only been three-tenths of a percent of the total global supply available, but it was adding as much as 10 percent to the price of light sweet crude.

Yet the Department of Energy insists and maintains that putting this royalty-in-kind oil underground has no consequence at all on the price of oil. Clearly it does. That is at odds with testimony we received before our committees. Clearly it has an impact on the price of gasoline. Filling the Strategic Petroleum Reserve when we have market record-high oil prices, as I said, puts upward pressure on the price of oil because even small volumes of oil off the market can have a dramatic price impact. That is especially true with what is called light sweet crude.

In recent days we saw President Bush visiting Saudi Arabia to ask the OPEC countries, particularly the Saudis, to increase production to help ease oil prices in our country. Well, the fact is, the OPEC cartel is going to meet this Friday to discuss whether any change to production is warranted. Their decision will impact the price of gasoline in this country this spring.

But there is another decision that will impact it. That is the decision by the Department of Energy to continue taking royalty-in-kind oil off the market and sticking it underground. This is exactly the wrong thing to do at the wrong time.

I have always been in favor of a Strategic Petroleum Reserve. But with prices where they are, and an economy that is sluggish, it makes no sense to continue to do this. I believe what we ought to do is pass some legislation. If I were writing the stimulus bill, I would include this provision in the stimulus bill.

Those are two ideas that I think should be considered. The first I would hope would be considered by unanimous consent. I can't believe anybody would object to putting on a check that goes out to 150 million people: Support Our Economy. Buy American. I do not think anybody believes that we want to provide a bunch of money and hope they will spend it on goods made in China. That hardly expands opportunities and the economy in this country. I am not saying they have to spend it on American-made goods, but what I am saying is, we ought to remind them, to the extent we can, what we are trying to do here, and what this stimulus rebate check is all about.

(The remarks of Mr. DORGAN pertaining to the submission of S. Res. 437 are located in today's RECORD under "Submission of Concurrent and Senate Resolutions.")

The PRESIDING OFFICER. The Senator from Missouri.

Mr. BOND. Madam President, I believe my distinguished colleague from Alabama has some comments and questions he wishes to raise, so I ask that he be recognized.

The PRESIDING OFFICER. The Senator from Alabama.

FISA

Mr. SESSIONS. Madam President, I thank my colleague, Senator BOND, the vice chairman of the Intelligence Committee. He has been working for a full year virtually on trying to accomplish what we need to accomplish now.

I may not be able to follow the debate, but it seems to me that now we are beginning to hear that somehow despite your determined efforts and those of Senator MCCONNELL and our side of the aisle the Republicans are being accused of holding up this legislation.

Can you give us your perspective on that? I am sure it is different from what I have heard on the floor earlier on.

Mr. BOND. Madam President, to respond to my colleague, it would be a pleasure. Let's go through the record.

In April of 2007, the Director of National Intelligence, or the DNI, submitted a request to update FISA, the Foreign Intelligence Surveillance, law to Congress. The draft legislation that he sent to Congress was not a political or partisan piece of legislation, it was absolutely essential because technology has changed and the old FISA law was prohibiting our agencies from having the ability to go up on a foreign target without getting an order of the FISA Court, which totally gridlocked that court.

But what he sent up was the result of a year of negotiations and coordination among civil servants in the Department of Justice and our intelligence agencies that will actually have to implement the system the legislation will cover. So the people who are running it set up the recommendation.

Soon after that, there was a court order issued that resulted in these significant gaps. That ruling brought important parts of the system we use to monitor terrorists overseas to a halt. It created dangerous gaps in our ability to collect. The need to pass a permanent legislative fix for FISA suddenly became much more urgent, and the DNI came before the Intelligence Committee in May of 2007 to explain why it was needed and to say how urgent it was.

Mr. SESSIONS. Indeed, didn't he say it couldn't have come at a worse time to have us be denied this kind of intelligence capability?

Mr. BOND. That is correct. As the DNI explained to Congress in a closed-door briefing for all Senators in July of 2007, the FISC ruling came at a time of heightened concern in our intelligence agencies that terrorist attacks against the homelands of our allies might be in the works.

The DNI explained in that briefing in no uncertain terms the urgent need to update FISA and close the intelligence gaps caused by the ruling so that our intelligence agencies would have the tools they need to detect terrorist plots against our homeland or our troops and allies overseas.

Mr. SESSIONS. To follow up on that, you are familiar with the NSA and have seen it. Would you dispute his decision based on what you know? Didn't you also conclude, as I did, that he was exactly right; this was absolutely critical to our national defense and security?

Mr. BOND. Mr. President, yes. I learned at the time why it was so essential, and I would say there is a letter from the DNI, a classified letter, which is available in our Intelligence Committee offices or in S-407 for Senators to read that says what the intelligence community was able to accomplish after the Protect America Act was passed on August 3, 4, and 5 of last year, which would not have been possible had we not changed the FISA law. So there are clear examples set forth in a classified letter that I invite all my colleagues to review. I would be happy to have them review it.

Mr. SESSIONS. When we heard what he said, we got busy. You were one of the leaders. We worked through and passed the legislation in August, just this past August, that basically affirmed this program and kept it going. But can you tell us now why we didn't make it permanent at the time?

Mr. BOND. First, I am not a big fan of sunsets. If the Intelligence Committee does its job—and with Chairman ROCKEFELLER leading and my role in it, I can assure you that we are looking at all of these laws, all of these practices, and authorizing legislation of the intelligence community to see if it is working, to see if it is working within proper bonds. But I believe that. And I believe the Attorney General was correct when he said we should not sunset these laws because there are no sunsets on our enemies' fatwas.

That came from our Attorney General. But we did agree to a 6-month sunset because Senate Democrats assured me that 6 months was long enough to take a systematic look at the law and come up with a strong, permanent solution. They believed we needed additional protections that had not existed in the original FISA law. It did not include one of the key elements that the DNI requested in his original April 2007 request. We had to pass a shortened version because of the timeline. But given that we had that sunset, our Intelligence Committee worked very hard, after the passage of the PAA, until we were able to pass on a bipartisan basis, by 13 to 2, a strong bill that adds significant new protections for Americans and which permits the DNI to conduct the program as he thinks it needs to be conducted to assure that our country is safe.

Mr. SESSIONS. How did we get here and why do we need another 15-day ex-

tension? Why can't we get this thing done?

Mr. BOND. That is kind of an obvious question that my colleague has asked. The following month, the Judiciary Committee of the Senate put out a bill on a straight party-line vote, a partisan substitute which was drafted without getting the effective input of the intelligence community, the Department of Justice. And the DNI said it absolutely would not work, so he couldn't support it. So a month after that, on December 17, the distinguished majority leader brought the bill to the Senate floor, thought it very timely to get it done in December, since we have a February 1 expiration date. But several members of the majority party filibustered the bill or actually they phoned in their objections, their filibusters, from campaign stops. And it could not go forward. Then the Senate didn't get around to taking up FISA again until over a month later, on January 23.

We only returned to FISA after taking up the Indian health legislation. I don't diminish the importance of that measure, but it might have waited until after we finished FISA.

Mr. SESSIONS. It seems to me that our Democratic leadership has had legislation from the Director of National Intelligence since April. We have refined it, particularly your committee, the Intelligence Committee, has moved it forward on the floor. And we have just wasted a lot of time when we need to be making this permanent.

Mr. BOND. Unfortunately, my colleague from Alabama is right. I know we both don't want to engage in finger-pointing, but some of my colleagues have been making statements about our efforts on the bill, which leave me no choice but to correct the record. I invite any of my colleagues who have a different view to come discuss it with me. It is critical that we move forward.

We have a 15-day extension. At the end of 15 days, this body goes on a week's recess. There is no reason we cannot pass this bill, conference with the House, and pass it by February 15 so American citizens will have the additional protections this bill includes, and our carriers will have the liability they must have to continue to participate in the program.

I thank my colleague from Alabama.

Mr. SESSIONS. I thank Senator BOND and Senator ROCKEFELLER and the Intelligence Committee. I serve as a member of the Judiciary Committee. I strongly opposed the bill that came out of our committee. I believed your bill, the Intelligence Committee bill, which passed 13 to 2 in a bipartisan fashion out of the Intelligence Committee, was superior to the one that passed Judiciary on a narrow party-line vote. I also grasped during that debate that one of the real differences was the Intelligence Committee members knew what was at stake. That had been your responsibility, to ensure that our intelligence community was