

can tell you even more than that. They are outstanding people and public servants. Steven Walther is from Nevada. He is one of those people who is in public service because he wants to do something to help his country. He has been very active for many years in State bar activities, very involved in the ABA activities, and he gave up a lucrative law practice to come here. He was a senior partner in a major law firm in Nevada. He did this for the right reason.

Both Cynthia and Steven are patient individuals. Steve Walther was first recommended to the President by me for this position on July 6, 2005. That is almost 3 years ago.

He waited almost 3 years for the full Senate to confirm him.

I recommended Ms. Bauerly to the President in July 2007. She has waited for confirmation over 11 months.

I cannot say enough nice things about Steven Walther. I want everyone within the sound of my voice to understand what a man of integrity he is. He is not even a Democrat. He is an Independent. But I have such confidence in his fairness that it did not matter what his party affiliation is. He is a fine individual, has a wonderful family, a son Wyatt who is getting used to the big city of Washington, DC.

I so appreciate Steve waiting since January with basically no job. He has had no paycheck. There has been no FEC. Some people dropped off because they couldn't afford to not have a job. But fortunately, for the FEC and our country, Steven Walther could afford to be unemployed for 6 months.

Again, I want the record spread with my appreciation for Steven Walther's public service and his friendship to me. These two individuals, Bauerly and Walther, have shown exceptional patience which will be an asset to them in their work as Commissioners. I wish them and the FEC very well.

EXECUTIVE SESSION

NOMINATIONS OF STEVEN T. WALTHER, CYNTHIA L. BAUERLY, CAROLINE C. HUNTER, DONALD F. MCGAHN, AND MATTHEW S. PETERSEN TO BE MEMBERS OF THE FEDERAL ELECTION COMMISSION

Mr. REID. Mr. President, I ask unanimous consent the Senate proceed to executive session to consider the following nominations: Calendar Nos. 306, 624, 625, and 626; that the Rules Committee be discharged from further consideration of PN 1765, the nomination of Matthew Petersen; that the Senate proceed en bloc to consideration of the nominations; that the Senate then proceed to vote on confirmation of the nominations in the order listed; that upon confirmation of the nominations, the motions to reconsider be laid on the table en bloc, the President be immediately notified of the Senate's ac-

tion, with no further motions in order, and the Senate then resume legislative session, with no intervening action or debate.

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

The clerk will report the first nomination.

The legislative clerk read the nomination of Steven T. Walther, of Nevada, to be a member of the Federal Election Commission.

The PRESIDING OFFICER. The question is, Will the Senate advise and consent to the nomination of Steven T. Walther, of Nevada, to be a member of the Federal Election Commission?

The nomination was confirmed.

The PRESIDING OFFICER. The clerk will report the next nomination.

The legislative clerk read the nomination of Cynthia L. Bauerly, of Minnesota, to be a member of the Federal Election Commission.

The PRESIDING OFFICER. The question is, Will the Senate advise and consent to the nomination of Cynthia L. Bauerly, of Minnesota, to be a member of the Federal Election Commission?

The nomination was confirmed.

The PRESIDING OFFICER. The clerk will report the next nomination.

The legislative clerk read the nomination of Caroline C. Hunter, of Florida, to be a member of the Federal Election Commission.

The PRESIDING OFFICER. The question is, Will the Senate advise and consent to the nomination of Caroline C. Hunter, of Florida, to be a member of the Federal Election Commission?

The nomination was confirmed.

The PRESIDING OFFICER. The clerk will report the next nomination.

The legislative clerk read the nomination of Donald F. McGahn, of the District of Columbia, to be a member of the Federal Election Commission.

The PRESIDING OFFICER. The question is, Will the Senate advise and consent to the nomination of Donald F. McGahn, of the District of Columbia, to be a member of the Federal Election Commission?

The nomination was confirmed.

The PRESIDING OFFICER. The clerk will report the last nomination.

The legislative clerk read the nomination of Matthew S. Petersen, of Utah, to be a member of the Federal Election Commission.

The PRESIDING OFFICER. The question is, Will the Senate advise and consent to the nomination of Matthew S. Petersen, of Utah, to be a member of the Federal Election Commission?

The nomination was confirmed.

The PRESIDING OFFICER. Under the previous order, the President will be immediately notified of the Senate's action.

LEGISLATIVE SESSION

The PRESIDING OFFICER. Under the previous order, the Senate will resume legislative session.

The majority leader.

MEASURES READ THE FIRST TIME—S. 3186 AND H.R. 6331

Mr. REID. Mr. President, it is my understanding there are two bills at the desk. I ask for their first reading en bloc.

The PRESIDING OFFICER. The clerk will report the bills by title.

The assistant legislative clerk read as follows.

A bill (S. 3186) to provide funding for the Low-Income Home Energy Assistance Program.

A bill (H.R. 6331) to amend titles XVIII and XIX of the Social Security Act to extend expiring provisions under the Medicare Program, to improve beneficiary access to preventive and mental health services, to enhance low-income benefit programs, and to maintain access to care in rural areas, including pharmacy access, and for other purposes.

Mr. REID. Mr. President, I am going to object to my own request en bloc, but prior to the Chair accepting my objection, I want everyone to know that S. 3186 is the Warm in Winter and Cool in Summer Act, which is LIHEAP. That is an important piece of legislation. We are going to work very hard to figure out a way to do that within the next 30 days. I would also say that H.R. 6331, the Medicare Improvements for Patients and Providers Act, is a bill that overwhelmingly passed the House of Representatives to take care of the so-called doctors' fix.

I now ask for their second reading en bloc, and I object to my own request en bloc.

The PRESIDING OFFICER. Objection is heard.

The bills will be read for the second time on the next legislative day.

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

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

MORNING BUSINESS

Mr. DODD. Mr. President, I ask unanimous consent that the Senate proceed to a period of morning business, with Senators permitted to speak for up to 10 minutes each, with the time to count postcloture.

The PRESIDING OFFICER. Is there objection?

Without objection, it is so ordered.

FISA AMENDMENTS ACT OF 2008

Mr. KYL. Mr. President, I rise today to speak in favor of the passage of the FISA Amendments Act of 2008. This is a law that our Nation needs. The most important change made by the pending

bill is to allow immediate and real-time surveillance of overseas targets as soon as they become apparent in the course of a foreign-intelligence investigation. FISA had never been intended to block surveillance of such targets, but a 2007 FISA court decision interpreted FISA to apply to even foreign-to-foreign communications that are routed through the United States. Because of changes in technology and U.S. dominance in the telecommunications industry, even phone calls from Afghanistan to Pakistan could be routed through the United States. As a result, a FISA order could be required before communications between two suspected al-Qaida members outside the United States could be monitored.

This system made overseas surveillance a practical impossibility in many cases and caused valuable intelligence to be lost. Our best tool against al-Qaida and other terrorists is intelligence; it is absolutely critical that we gather whatever intelligence is available.

In the summer of 2007, Congress enacted a 6-month restoration of U.S. agents' surveillance capabilities with the Protect America Act. Today—over 4 months after the PAA expired—Congress finally acts to extend this surveillance authority for another 4½ years. I am heartened to note that the Attorney General and the Director of National Intelligence both strongly support this bill and believe that it provides them with the tools they need to gather intelligence about America's foreign enemies.

Critically, this bill allows immediate and real-time surveillance of foreign targets located overseas whenever the Justice Department and the intelligence community find that, without immediate surveillance, "intelligence important to the national security of the United States may be lost or not timely acquired and time does not permit the issuance" of a court order prior to such surveillance. This provision, in a new section 702(c)(2) of FISA, addresses the exact problem that intelligence agencies faced in 2007. Congress expects our intelligence agents to use every tool that is technologically available to monitor al-Qaida and those associated with it. With this reform, we make such surveillance possible.

I also think that it is important that, in new section 702(i), the FISA Amendments Act allows pending surveillance certifications to be immediately amended to allow surveillance of new targets related to or growing out of previous surveillance. This should help to reduce the paperwork burden of FISA, allowing our agents to focus more time on monitoring the enemy and less on filling out forms. Also, the judicial review authorized by this section is appropriately limited and recognizes the intelligence community's primary role in deciding what foreign targets to monitor. The court's role is limited to reviewing whether certifi-

cations are procedurally proper and are accompanied by reasonable procedures to limit potential impact on U.S. persons. Thus, courts could block any obviously bad faith or improper use of foreign surveillance that might affect U.S. persons, but courts will not be second-guessing intelligence judgments, and should not be imposing procedures or making demands that will consume intelligence resources and divert agents from their primary mission. This limited role should also allow the FISA Court to decide these cases very quickly, minimizing the burden on both the intelligence community and on those judges who are assigned to the FISA Court.

I should also note that this bill contains important provisions that will allow all of the lawsuits against telecommunications companies to be dismissed upon certification by the Attorney General. Foreign intelligence surveillance is a matter that our Constitution entrusts to the executive in consultation with Congress, not to private litigants and the judiciary. These lawsuits all should have been dismissed immediately; this bill will finally produce that result. Title II is a critical part of this bill that should have been enacted long ago. Frankly, I find it odd that much of the early criticism of this bill has been directed at this of all provisions. Those who are opposed to the President's efforts to monitor al-Qaida's communications after 9/11 should take their argument to the President, not to the private companies that patriotically complied with government requests to help this country. Monitoring of al-Qaida's electronic communications cannot be conducted without the cooperation of private companies. The general rule that private citizens acting in good faith to assist law enforcement are immune from suit has deep roots and serves important public policies. As Justice Cardozo noted in the 1928 case of *Babbington v. Yellow Taxi Corporation*, the rule ensures that "the citizenry may be called upon to enforce the justice of the State, not faintly and with lagging steps, but honestly and bravely and with whatever implements and facilities are convenient and at hand."

Finally, I should note that this bill's so-called "exclusive means" provision, like the similar provision in the 1978 FISA, is hortatory verbiage that obviously yields the Constitutional authority of the President. The FISA Court of Review, in its 2002 decision in *In re Sealed Cases*, made the point:

The [Fourth Circuit in the *Truong* case], as did all the other courts to have decided the issue, held that the President did have inherent authority to conduct warrantless searches to obtain foreign intelligence information. . . . We take for granted that the President does have that authority and, assuming that is so, FISA could not encroach on the President's constitutional power.

Indeed, every administration since FISA was enacted—including the Carter administration—has concluded that Congress cannot take away the

President's power to monitor foreign enemies of the United States without a warrant, and that to the extent that FISA purports to do so, it is unconstitutional. The Constitution's framers vested the executive with primary responsibility and authority to protect the United States from foreign attack. Section 102 repeats FISA's "exclusive-means" claims, yet provides in the same section of the bill, at subsection (c), an amendment to the immunity provisions for electronic communications service providers in 18 U.S.C. 2511(2) to require that certifications conferring immunity identify the "specific statutory provision" that allows the surveillance, but only if the certification "for assistance to obtain foreign intelligence information is based on statutory authority." This provision, in the same section making claims of exclusive means, acknowledges that not all surveillance is based on statutory authority, but may, instead, be based on the executive's constitutional authority. If this nation again finds itself under attack as it did on September 11, those in charge of our security should not conclude from the exclusive-means language in section 102 that they may not act in any constitutionally appropriate way to protect this country.

Finally, the "sunset" provision in section 403, which will repeal the authorities in the bill at the end of 2012, is problematic. As the Attorney General and the Director of National Intelligence have said: "[t]he Intelligence Community operates more effectively when the rules governing our intelligence professionals' ability to track our enemies are firmly established." The need to modernize FISA has been extensively debated since 2006, including numerous hearings, briefings, and floor debates that "involved the discussion in open settings of extraordinary information dealing with sensitive intelligence operations." As the Attorney General and the Director of National Intelligence have pointed out, "[e]very time we repeat this process it risks exposing our intelligence sources and methods to our adversaries."

Despite these flaws, the bill before us is needed. It is very similar to the bill that the Senate passed earlier this Congress and on which the House refused to act. It has passed the House by a 3-to-1 margin, and I expect that we will see a similar margin in the Senate, as the bill already appears to have gained the support of some Senators who opposed last year's bill. I look forward to the passage of this bill.

WORLD REFUGEE DAY

Mr. LEVIN. Mr. President, I would like to take a moment to talk about World Refugee Day, which we recently recognized, and offer some observations on the millions of refugees around the world and our efforts to aid them.