United States of America

Congressional Record

PROCEEDINGS AND DEBATES OF THE 110th CONGRESS, SECOND SESSION

Vol. 154 WASHINGTON, WEDNESDAY, JUNE 25, 2008 No. 106

Senate

The Senate met at 9:30 a.m. and was called to order by the Honorable BENJAMIN L. CARDIN, a Senator from the State of Maryland.

PRAYER

The Chaplain, Dr. Barry C. Black, offered the following prayer:

Let us pray.

O Lord, who has been our dwelling place in all generations, keep us under the canopy of Your care. Guide our Senators by the power of Your wisdom and love. Lord, don't separate them from life's stresses and strains or keep them from problems and pain but sustain them by Your grace as each of life's seasons unfolds. Shelter them in their coming in and their going out, using them as Your instruments to advance Your kingdom. May all they say and do today be under Your control and for Your glory. As You have guided people in the past, so lead our lawmakers today.

We pray in Your sacred Name. Amen.

PLEDGE OF ALLEGIANCE

The Honorable BENJAMIN L. CARDIN led the Pledge of Allegiance, as follows:

I pledge allegiance to the Flag of the United States of America, and to the Republic for which it stands, one nation under God, indivisible, with liberty and justice for all.

APPOINTMENT OF ACTING PRESIDENT PRO TEMPORE

The PRESIDING OFFICER. The clerk will please read a communication to the Senate from the President pro tempore (Mr. BYRD).

The legislative clerk read the following letter:

U.S. SENATE,
PRESIDENT PRO TEMPORE,
Washington, DC, June 25, 2008.

To the Senate:

Under the provisions of rule I, paragraph 3, of the Standing Rules of the Senate, I hereby appoint the Honorable BENJAMIN L. CARDIN, a Senator from the State of Maryland, to perform the duties of the Chair.

ROBERT C. BYRD,
President pro tempore.

Mr. CARDIN thereupon assumed the chair as Acting President pro tempore.

RECOGNITION OF THE MAJORITY LEADER

The ACTING PRESIDENT pro tempore. The majority leader is recognized.

SCHEDULE

Mr. REID. Mr. President, following the remarks of the two leaders, the Senate will resume consideration of the House message to accompany H.R. 3221, which is the housing legislation. Yesterday, cloture was invoked on the motion to concur in the House amendment with the Dodd-Shelby substitute. We hope to dispose of the remaining amendments to the bill at an early time so we can complete this legislation.

MEASURES PLACED ON THE CALENDAR—S. 3186 AND H.R. 6331

Mr. REID. Mr. President, it is my understanding there are two bills now at the desk due for a second reading.

The ACTING PRESIDENT pro tempore. The clerk will report the bills by title for the second time.

The 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 would object to any further proceedings with respect to these bills en bloc.

The ACTING PRESIDENT pro tempore. Objection is heard. The bills will be placed on the calendar.

Mr. REID. Mr. President, I suggest the absence of a quorum.

The ACTING PRESIDENT pro tempore. The clerk will call the roll.

The legislative clerk proceeded to call the roll.

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

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

RESERVATION OF LEADER TIME

The ACTING PRESIDENT pro tempore. Under the previous order, the leadership time is reserved.

AMERICAN HOUSING RESCUE AND FORECLOSURE PREVENTION ACT OF 2008

The ACTING PRESIDENT pro tempore. Under the previous order, the Senate will resume consideration of the House message to accompany H.R. 3221, which the clerk will report.

The assistant clerk read as follows:

A message from the House of Representatives to accompany H.R. 3221, an act to provide needed housing reform and for other purposes.

Pending:

Reid (for Dodd/Shelby) amendment No. 4983, of a perfecting nature.

Bond amendment No. 4987 (to amendment No. 4983), to enhance mortgage loan disclosure requirements with additional safeguards for adjustable rate mortgages with an initial fixed rate and loans that contain prepayment penalty.

Dole amendment No. 4984 (to amendment No. 4983), to improve the regulation of appraisal standards.

Sununu amendment No. 4999 (to amendment No. 4983), to amend the United States Housing Act of 1937 to exempt qualified public housing agencies from the requirement of preparing an annual public housing agency plan.

● This "bullet" symbol identifies statements or insertions which are not spoken by a Member of the Senate on the floor.

Kohl amendment No. 4988 (to amendment No. 4983), to protect the property and security of homeowners who are subject to foreclosure proceedings.

Mr. GRASSLEY. Mr. President, I ask unanimous consent to speak as in morning business.

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

OVERSIGHT

Mr. GRASSLEY. I am here today to discuss a very serious matter that goes right to the heart of one of Congress's most important responsibilities, the responsibility of constitutional oversight to see that the laws are faithfully executed by the executive branch of Government.

American taxpayers expect Congress to exercise oversight in order to ensure that their hard-earned dollars are not wasted. To conduct more effective oversight, Congress adopted the Inspector General Act in 1978, creating a system of inspectors general. I will probably refer to them as everyone else does, as IGs.

We did this throughout many departments of Government. The IGs are supposed to be watchdogs or, as I like to say, a junkyard dog. They are our first line of defense against fraud, waste, and abuse. When it happens, the IGs are supposed to report it to the agency head and to Congress and to recommend appropriate corrective action.

IGs are the top cops inside of each agency in the executive branch of Government. They police the Federal workforce. If rules are broken, then they have to investigate allegations of misconduct and refer their findings to proper authorities.

To be credible, IGs must be beyond reproach. Above all, they must live by the rules they themselves enforce. They must set an example of excellence in their personal conduct and they must always do so; otherwise, they lack credibility. So I tend to, as a Member of the Senate, watch the watchdogs. Over the years in doing oversight work, I have found inspectors general who do not seem to meet these standards. I am disappointed to have to report to the Senate today about a new IG trouble spot.

There are allegations of misconduct in the upper echelons of the Treasury's IG office. A tip from a whistleblower earlier this year first alerted me to this problem. On February 12, 2008, I wrote a letter to Acting Treasury IG Schindel asking for a copy of the investigative report and all pertinent material bearing on the matter that was reported to me.

I also asked Mr. Schindel to tell me how and when he intended to address and resolve the issues raised in that report. Mr. Schindel responded promptly, providing a redacted copy of the report on February 15. On February 29, he assured me that senior level officials involved had been placed on paid administrative leave. They would remain on that status, he told me, ''until all investigative matters have been adjudicated,'' and ''one of them'' was reassigned to what appeared to be a questionable post.

The report of investigation on this matter was prepared by the Department of Labor IG. It is dated January 14, 2008. Since the Treasury IG lacks an internal affairs unit, IG Schindel referred the case to the Department of Labor IG for investigation. This was to ensure maximum independence.

Acting IG Schindel made the referral on June 18, 2007. He was briefed on the findings in the final report on September 26 of last year. The Department of Labor report of investigations substantiated wrongdoing on the part of senior Treasury IG officials. The allegations are very serious. My staff has carefully reviewed all of the materials provided by IG Schindel and interviewed a number of witnesses with knowledge on the issue.

Based on the oversight investigation conducted by my staff, I wrote to Treasury Secretary Paulson on February 28 this year. In that letter, I expressed grave concern to Secretary Paulson about the way the Acting IG Schindel appeared to be responding to the allegations that were substantiated by the more independent review by the Labor Department IG, as was reported in his writings.

This is what I said to my friend, Secretary Paulson:

Mr. Schindel stated that the report showed no corruption, criminal activity, or serious wrongdoing on the part of the senior officials. I am stunned that anyone with management responsibilities could make this statement after reading the Labor IG report.

The Labor IG presented a compelling case of high-level IG misconduct backed up with rock solid evidence. Mr. Schindel seemed unable to see what the Labor inspector general sees. Is he turning a blind eye to an obvious problem?

Secretary Paulson responded to my letter on March 10. He informed me that he has been briefed on the Labor IG's report and ''communicated to Acting IG Schindel'' his ''views'' on the matter.

The Labor IG report seems to leave little or no wiggle room. Based on a continuous stream of information being provided to my staff, there is growing concern about Acting IG Schindel's commitment to solving these problems. I think of these as obvious problems.

Acting IG Schindel has known about the findings in this report for 9 months until now. To bring the issue into sharper focus, take a moment to review the Labor IG's findings. This is what the Labor IG report found:

Our investigation corroborated the allegation that senior IG officials violated the Public Transit Subsidy program.

This program provides money in the form of fare cards to Government employees to help cover the high cost of using public transportation to get to work.

There is an added benefit to the public transit subsidy program. The value of fare cards received in this program is not taxable. Subjects of the Labor IG investigation signed applications to participate in the public transit subsidy. In signing that document, they certified that they would abide by the terms of the program. The public transit subsidy program application forms, which these individuals sign, state:

Making a false, fictitious or fraudulent certification may render the maker subject to criminal investigation under title 18, United States Code, section 1001.

They allegedly took transit subsidies while accepting free rides to work from fellow agents, sometimes in Government vehicles.

The findings of the Labor IG's report are of particular concern to me for another reason, and this seems to be the most troubling part for me. The senior Treasury IG officials involved in fare card abuse were responsible for investigating and referring for criminal prosecution a number of other Treasury Department employees who had allegedly violated this same program called the Transit Subsidy Program.

As I said up front, the IGs must live by the rules they are sworn to enforce. When they do not, then inspectors general lose credibility. The Labor report also finds that the officials involved ''inappropriately intervened in closing [another] investigation'' of alleged PTSP abuse. This one concerned an employee at another agency who also allegedly violated the transit subsidy program. According to the Labor IG's report, the senior Treasury IG officials ''escorted'' the agent in charge of this investigation to their office ''where they discussed closing the case.'' They apparently ''instructed him to cancel'' a key interview and ''told him the case would be closed.''

Since the investigation was essentially complete and there was credible evidence to support the allegations, this meeting gave the appearance of impropriety. The Labor IG's investigators interviewed the Treasury IG officials about this meeting. The Treasury IG officials reportedly cited high agent caseloads as an excuse for their attempt to close it down. They also claimed the police at that agency ''were capable of working the investigation'' and that ''there was no fraud or loss.''

The Labor investigators make one point crystal clear: The claims put forward by Treasury IG officials did not stand up to scrutiny. The Labor IG's investigators determined that the Treasury IG's office had worked similar cases involving this agency's employees in the past. They found that special agents in the Treasury IG's office had a typical caseload of 15 to 16 cases and not the usual 30 caseload claimed by one of the subjects of this investigation.

I understand the employee involved in these allegations of public transit subsidy program violations was given a

proposed notice of removal on June 18, 2008. This agency is trying hard to crack down on such violations. This should be a wake-up call for Mr. Schindel. The abuse of the public transit subsidy program alleged in the Labor IG's report constitutes, at best, misuse or abuse of public moneys and, at worst, outright theft.

There is one more very disturbing finding in the Labor IG's report I should highlight. The Labor report ''questions the judgment'' of the senior Treasury IG officials for their alleged involvement in the reinvestigation of another employee misconduct case. This particular investigation was originally conducted by the Treasury IG for Tax Administration or TIGTA. Once again, this investigation was referred to an outside agency to ensure greater independence.

According to the Labor report, the TIGTA investigation determined that the Treasury IG agent ''misused his position, his issued vehicle, and made false and misleading statements'' during the course of the investigation. For a Federal law enforcement officer, making false statements during an investigation, as alleged, could be a career-ending mistake. As chronicled in the Labor IG's report, the senior Treasury IG didn't like the TIGTA's findings and wanted them changed. The Labor IG's report is very clear in stating that the only reason for the reinvestigation was to change the findings of the original Treasury IG for Tax Administration investigation. The Labor IG report concluded:

> The appearance is that the sole purpose of intervening in the aftermath of [the Treasury Inspector General for Tax Administration's] investigation was to mitigate [the] findings, particularly by undermining [the inspector general's] apparently well supported finding that . . . [the agent involved] . . . had made false statements.

The report goes on to say:

> The evidence suggests that TIGTA's findings were correct. It is clear that the only purpose of the reinvestigation . . . was to change the findings of the investigation so [the agent involved] would not have a Giglio issue.

The person involved in this case was suspended for 10 days 2 years ago. The Labor IG also questioned the leniency of the agent's punishment, noting that misuse of a Government vehicle alone normally carries a 30-day suspension. The Treasury Inspector General for Tax Administration also alleges that the legal counsel to the Treasury IG may have been involved in an attempt to quash or alter TIGTA's final report of investigation. TIGTA provided a document which indicates that the Treasury IG's legal counsel ''disagreed with the results of the investigation.'' He ''expected a draft ROI'' and ''asked if the Final Report of Investigation could be changed.''

Fiddling with these kinds of reports ought to raise a lot of questions among people in authority about whether things are being done right.

He was informed by the agent in charge that TIGTA ''did not submit draft ROIs and would not make any changes to the final ROI.'' The legal counsel denies these allegations.

The Labor IG also found the legal counsel's ''advice to the DOT-OIG questionable regarding the investigation.'' The Labor IG reached this conclusion because the legal counsel had listened to the tape-recorded interview, during which the subject allegedly ''made a false statement under oath to the TIGTA agent.''

The three substantiated allegations I have laid out, which are presented clearly in the Labor IG's report, are each disturbing in their own right. But if you take them all together, they paint a truly awful picture of what is going on in that office. This report is the result of an independent investigation conducted by professional law enforcement officers. The results of this investigation demand serious, thorough, fair, and prompt action. I met with Acting Treasury IG Schindel on March 13 to review this matter. He assured me he would take decisive action to clean up this mess. More recently, I was told the Acting Treasury IG is wrestling with new allegations. Addressing the Department of Labor IG report must be a first priority to show us in Congress that he is carrying out his responsibilities. He needs to sink his teeth into that material and close it out once and for all. In a letter on May 30, I asked the acting inspector general again to proceed with his review of this matter ''as quickly as possible.'' I also insisted it be done by the book, ''consistent with all applicable rules and regulations.''

I call on Acting Treasury Inspector General Schindel to keep his word. That is all I ask, just keep his word, do what he told me he was going to do. I want him to stick to his repeated assurances—in his letters of February 15 and February 29, at our March 13 meeting, and again in a letter of June 2. I expect no more and no less.

Indecision is costing the taxpayers money. To date, these officials have collected 3 months' worth of paid administrative leave. They are senior executives earning top dollar. Their administrative leave has already cost the taxpayers about $90,000, and the number is climbing. Continuing mismanagement and indecision in the Treasury IG's office is wasting precious taxpayer dollars. Acting IG Schindel has a responsibility to show he runs a first-class inspector general's office, one that is beyond reproach. He cannot operate effectively as an IG until he gets his own house in order. His job is to deter, to detect, and report waste but not to do it himself.

I yield the floor and suggest the absence of a quorum.

The PRESIDING OFFICER (Mr. NELSON of Nebraska). The clerk will call the roll.

The assistant legislative clerk proceeded to call the roll.

Mr. ALEXANDER. 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. ALEXANDER. I ask unanimous consent that I be allowed to speak for up to 10 minutes as in morning business.

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

SUPPLY AND DEMAND

Mr. ALEXANDER. Mr. President, I have received 600 e-mails and letters from Tennesseans in response to a request I put out asking them to share their personal stories about high gas prices. It has been my practice each week to put a few of those into the CONGRESSIONAL RECORD to remind my colleagues and to remind our country that we understand that people are hurting. Tennesseans are hurting in their jobs, in their families, and in their homes. Mr. President, $4-plus gasoline is a big problem for Tennesseans.

Today, I wish to submit for the CONGRESSIONAL RECORD five more letters from among the nearly 600 that I have received, and I ask unanimous consent that following my remarks these letters be printed in the RECORD.

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

(See exhibit 1.)

Mr. ALEXANDER. The first comes from Christy Long in Maynardville, TN. She works at the East Tennessee Children's Hospital in Knoxville, but she is worried about the cost of her commute. She is a diabetic. She is having trouble paying for her insulin shots due to the rising gas prices. She says:

> Gas for work or insulin to live. That is the decision I have had to make several times daily.

James Edwards from Charlotte, TN: James drives a rural route for the Postal Service, and he uses his own car, but the $26-a-day allowance doesn't cover the gas he uses anymore. He says that since the 10-percent ethanol mandate, he gets less mileage and has to use more gas. His wife's 40-mile commute to and from work every day is also cutting into their budget.

Kaye Nolen in Dyer, TN: Kay used to drive across the country once a year to see her family in Illinois, Utah, and New Mexico, but can't afford to do that this year. She says she is afraid that she will not be able to spend Thanksgiving with her family this year and that she will not be able to afford gas to make it to work if the prices keep going up.

Ruthann Booher of Crossville, TN: Ruthann and her husband have had to make significant cuts in their driving and grocery buying because of escalating costs. Her husband, who is 62, is now considering quitting his job at Wal-Mart and drawing Social Security since driving to work is so expensive. They can't afford the payment on a new car with better mileage.

Brenda Northern in Walland, TN, which is in the same county in which I live: Brenda is 60. She can barely afford to drive to visit her mother, who is 79 now, and it is getting harder and harder to make all of her payments. Her

husband has to use diesel for his truck because he moves mobile homes for a living and diesel prices keep going up too.

She says: I just do not know how we are going to make it.

I want Christy and James and Kaye and Ruthann and Brenda to know that I believe Senators on both sides of the aisle care about this matter, understand what is happening, and are ready to deal with it. I know on the Republican side, here is what we believe: We believe the answer to $4 gas prices is to find more and use less; that is, find more oil and use less oil.

Economics 101 taught us the law of supply and demand. The problem today fundamentally—and most Americans understand this; Americans know this—our problem is our supplies worldwide are not growing as fast as our demand worldwide for oil, and so the price of gasoline is going up. So if we had more supplies, and if we used less oil, the price of gasoline would go down. So we say on the Republican side: Find more, use less.

There seems to be a lot of agreement on both sides of the aisle about the using less part. For example, last year, the Senate did the most important thing it could do to reduce our dependence on foreign oil by passing higher fuel efficiency standards that said that cars and trucks had to be up to 35 miles a gallon by 2020. We did that together, Republicans and Democrats.

We on the Republican side are ready to try to make plug-in electric cars commonplace. I had a TVA Congressional Caucus hearing on that the other day in Nashville. Major car companies such as General Motors, Toyota, Nissan, and Ford are making plug-ins that are going to be available next year. TVA and other utilities have plenty of extra electricity at night to plug in, so literally you can plug your car in at night for 60 cents and fill it up with fuel instead of $70 worth of gasoline. I believe tens of thousands of Tennesseans and millions of Americans are going to be doing that.

If we set as our goal and take all the steps we need to take in the Senate to make plug-in electric cars and trucks commonplace, we could use less. Many estimates from General Motors and others is that just the plug-in electric vehicles would cut our imported oil by one-third, which is now about 12 million barrels a day. That is a significant reduction.

We can use less oil if we have a crash program in advanced biofuels. There is a lot of concern about ethanol and its effect on food prices. Well, we can grow a lot of crops that we don't eat such as switchgrass, for example, and with more research on cellulosic ethanol we can use less oil.

The other half our strategy to lower gas prices is finding more. That is where we have a difference of opinion. It seems that the other side of the aisle wants to repeal half the law of supply and demand. It is a new form of economics. Maybe we could call it ''Obama-nomics'' or some other name. But we say: All right, we agree on using less; now let's talk about finding more. What about, for example, allowing other States, such as Virginia, whose legislature says it wants to, to do what Texas, Louisiana, Mississippi, and Alabama do, which is to explore for oil offshore. We have a lot of it. We permitted an enlargement of that in the Gulf of Mexico a couple of years ago. Already the money is beginning to come in from the bids, and 37½ percent of the money goes to the States for their use for education or to nourish their beaches or whatever, and one-eighth goes to the Land and Water Conservation Fund.

The Presiding Officer and I both were Governors of our States. Neither one of us was fortunate enough to have an ocean on our State, so we don't have any potential for offshore drilling. I can't speak for the former Governor of Nebraska, but I can for Tennessee. If we had the opportunity in Tennessee to put oil and gas rigs 50 miles offshore where we couldn't see them and explore for oil and gas, and keep 37½ percent of the revenue and put it in a fund for our universities to make them among the best in the world, and to keep taxes low, and to use the money for greenways or to nourish the beaches or for other purposes, we would do it in a minute. I would think sooner or later Virginia will say they would like to do that. Maybe North Carolina will. Maybe Florida will.

Our proposal is simply, if the State wants to do it, the State can do it. No one is saying Virginia must do it or North Carolina must do it. It simply gives them the option, and it gives us more American oil and more supply to help stabilize and bring down the price of $4 gasoline.

But Senator OBAMA and most of the Democrats on the other side of the aisle say: No, we can't. No, we can't to offshore drilling. No, we can't to oil shale, which is in four Western States. There is, conservatively speaking, according to the Department of the Interior, 1 million barrels a day that we could get from offshore exploration and 2 million barrels a day that we could get from oil shale. If we added 3 million barrels a day to our production in the United States, we would increase by one-third the production that we have in the United States. We would be making more of our contribution to the world supply of oil.

We are the third largest producer of oil in the world. Why should we go begging the Saudis to drill more when we can produce more ourselves. That is part of it: Find more, use less.

So we need to come to some conclusion. We want a bipartisan result. We know in the Senate we have to get 60 votes to make anything happen. But I would be hopeful that the Democratic leadership, which is in charge of the agenda, would allow us in July to bring up these matters and act like a Senate. Let's vote. Let's debate. Let's talk about ways to use less. We could find substantial agreement, whether it is on plug-in vehicles, research for advanced biofuels, or conservation.

Senator WARNER has suggested that the Federal Government ought to use less as a good example for the rest of the country. That is a good idea. Senator MCCAIN and others have lots of good ideas as well.

Let's talk about finding more, too, for gasoline in terms of offshore drilling or in terms of oil shale. We can leave drilling in Alaska out of the discussion if that keeps us from having a bipartisan agreement, although it is the fastest way to get 1 million new barrels of oil a day. Let's put it aside for just a moment and say we want to work across the aisle to get a bipartisan agreement. We know we can't reach that agreement with ANWR included, so we will put that aside for the moment. But can we not as a Senate, in a bipartisan way, agree that we should be finding more and using less and not be saying when it comes to offshore exploration, no, we can't, and not be saying when it comes to oil shale: No, we can't. When Senator MCCAIN says we need to double our number of nuclear plants, we can't say that we have enough clean, carbon-free electricity to deal with clean air, global warming, and plug-in cars, but from the other side comes: No, we can't. We cannot say ''no, we can't'' to finding more if we want to bring down $4 gasoline prices.

So I say to Christy, James, Kaye, Ruthann, Brenda, and the 600 Tennesseans who have written me about $4 gasoline, over this Fourth of July recess, a good thing to say to your Members of the Senate and Members of Congress is: Find more and use less. Yes, we can find more. Yes, we can use less. Yes, we can bring down the $4 price of gasoline.

Some have said it will take 10 years. Well, President Kennedy didn't shy away from asking us to take 10 years to go to the Moon. President Roosevelt didn't shy away from putting in the Manhattan Project to split the atom and build a bomb to win the war even though he knew it would take several years. What is wrong with it taking several years? Are we supposed to sit here and let our 2-year-old grandchildren have the same energy crisis to deal with 10 years from now that we have today? Leadership is about looking ahead. It might take 1, 2, 5, or 10 years, but the time to start is today. The way to do it is working across the aisle. The formula for it is economics 101: More supply, less demand, find more, use less. Today, the Republicans are ready to do that. We are ready to do both, find more and use less. But the Democrats are not.

Mr. President, I yield the floor.

EXHIBIT 1

1. Christy Long, Maynardville, TN—Christy works at the East TN Children's Hospital in Knoxville but is worried about the

cost of the commute. She is a diabetic and is having trouble paying for her insulin shots due to the rising gas prices: ''Gas for work or insulin to live . . . that is the decision that I have had to make several times daily.''

2. James Edwards, Charlotte, TN—James drives a rural route for the Postal Service and uses his own car, but the $26-a-day allowance doesn't cover the gas he uses anymore. He says that since the 10% ethanol mandate, he gets less mileage and has to use more gas. His wife's 40–mile commute to and from work everyday is also cutting into their budget.

3. Kaye Nolen, Dyer, TN—Kaye used to drive across country once a year to see her family in Illinois, Utah and New Mexico, but can't afford to do that this year. She says she is afraid that she won't get to spend Thanksgiving with her family this year and that she won't be able to afford gas to make it to work if prices keep going up.

4. Ruthann Booher, Crossville, TN—Ruthann and her husband have had to make significant cuts in their driving and grocery buying because of escalating costs. Her husband, who is 62, is now considering quitting his job at Wal-Mart and drawing Social Security since driving to work is so expensive. They can't afford the payment on a new car with better mileage.

5. Brenda Northern, Walland, TN—Brenda is 60 and can barely afford to drive to visit her mother (who is 79) anymore, and its getting harder and harder to make all her payments. Her husband has to use diesel for his truck because he moves mobile homes for a living and diesel prices keep going up too. She says, ''I just do not know how we are going to make it!''

Hi my name is Christy Long, the gas prices are very hard to deal with. I work 40 hrs a week at East TN Childrens Hospital in Knoxville TN and make decent money. However, between my health insurance, daycare, school fees, groceries, my medicine because I am a diabetic on insulin, plus my house payment, electric, water etc . . . Then buy gas for me to get back in forth to work on . . . Humm lets just say that I wished I could have government benefits for the other stuff so that I could afford my gas. My husband and I whom he works 60 hrs a week at his job have considered me quitting work and staying home due to the fact that we can not afford the gas for me to get back and forth to work, plus eat, my medicine, his medicine and just to live. It is really sad when you have to pick do I want to buy my insulin prescription for $60 this month or do I want to buy $60 worth of gas so that I can get back and forth to work for a week. That has happened a couple of times in the last 6 months to my family. Luckily I have had a good doctor that has given me samples several times to get me thru. Because as anybody would know without my insulin I can not live.

You see my story is not my family can not go on vacation this year or anything, my story is that I do not make enough money to live and work. It is one or the other. . . Gas for work or insulin to live . . . That is the decision that I have had to make several times lately.

Sincerely,

CHRISTY LONG,
Maynardville, TN.

The high gas price is having a great impact on me and my family. I work for the U.S. Postal Service. I have a rural route, which means I use my own vehicle.

I am responsible for the maintenance, insurance and fuel for my vehicle. Even though I receive a vehicle allowance to operate my vehicle for the U. S. Postal Service, it is not adequate.

My allowance is $26.60 per day. Since I am continuously running, starting, stopping my vehicle, I go through about 5–6 gallons of gas a day. At $3.87 a gallon (this what I paid yesterday) and having to fill up my vehicle every other day, it is costing me about $25.00 per day (that's $125.00 per week or $500.00 per month.

That is only for the fuel. I also have to replace brakes, tires and other items for frequently because of the nature of the job I perform.

My wife works at Fort Campbell, Ky and we live about 40 miles from her work. The cost for gas for her runs about $120.00 per week.

Since it was mandated to add 10% ethanol to gasoline, we get less miles per gallon so this means we use more gas.

Since there is a greater price we pay for gas, everyday life (food, utilities, etc.) is more expensive. I served over 21 years in the military and I am proud of this service. America is noted for its compassion for helping other nations, however, we are doing our own country a disservice by not taking care of our own.

This my story and I hope with enough stories like this we can convince the powers that be we need to take care of business soon. By this, I mean do more drilling and build more refineries in America and stop depending on other countries for our own survival.

Thanks for your concern and taking your time to address this issue.

Sincerely,

JAMES R. EDWARDS, SR.,
Charlotte, TN.

Dear Sir, You asked how the high gasoline prices are hurting me?

I can't afford to drive to Moline, Illinois to see my three daughters nor to see two granddaughters graduate from high school. I can't drive to Utah to see my Dad and sister. I can't drive to New Mexico to see my mother. I can't even make the trip to Branson, MO to help my elderly Aunt and Uncle every other month. I used to make the round trip drive from TN to MO to NM to UT to MO to TN once a year. Not now! Can't afford the gasoline!! I used to go to IL to spend Thanksgiving with my daughters. I don't think I can afford that trip this year.

I am barely affording the gasoline to go to work four days a week, shopping once a week and to Church on Sunday. That all costs me around $48 a week. Soon I will have to quit my job because I can't afford the gasoline to drive the 28 miles a day. If I quit my job, what do I have left?

Goodness sakes! When will this all end? I can't afford to go to work and eat one meal a day!! I am willing to work, if I have a way to get there!

Thanks for asking my opinion on this horrible state of affairs.

Sincerely,

KAYE NOLEN,
Dyer, TN.

DEAR SENATOR ALEXANDER: My husband and I have lived in Crossville, TN for 19 years. Never before have we had the problems making ends meet as we are having now. My husband works full time at WalMart. He doesn't make a whole lot of money, but we were getting by. With the gas prices skyrocketing day by day and the trickle down effect on everything else, we have had to really tighten our belts. I used to be able to go to the store a few times a week for groceries that we would run out of. Now I only go once a week. If I have forgotten something, or we run out, we have to do without until I can go the next week. The price of groceries is another factor and I realize it is mostly because of the cost of transporting the goods to the stores. It is also the cost of harvesting the crops due to the gasoline used for farm equipment. It's hurting all of us.

My husband is 62 and is now seriously considering drawing his Social Security and working 3 days a week. We would have more money, but he would have to take a reduced amount instead of waiting until he's 66 and being able to draw the full amount. We have also considered getting a more fuel efficient vehicle, but can't afford to make the payments. We're actually caught between a rock and a hard place. And there will be no vacation for us this year, or any year the fuel prices are this ridiculous. We will just have to stay home.

Thank you for the opportunity to vent my frustration. I think you are doing a great job for the people of Tennessee and I think you would make a great president.

Sincerely,

RUTHANN BOOHER,
Crossville, TN.

From: Northern, Brenda
Sent: Mon 6/16/2008 12:54 PM
To: Alexander, Senator (Alexander)
Subject: My family's Crisis!

Sen. Alexander, I appreciate the opportunity to address the issue of increasing Gas & Diesel prices on my family in particular, even though everyone is experiencing the same problem.

I fill my car up each week and the price just keeps going up, 2 weeks ago it was $53.00, the next week $61.00, and this week $64.00 and my tank was not all the way empty either time.

I drive to work the supermarket and stop by to check on my Mother who is 79 now, and go to Church. I am 60 years old and would love to have the opportunity to spend more time with my Mother, my Husband, Children & Grandchildren, but Gasoline keeps rising, which makes everything else more expensive, so we have trouble meeting our payments, and no recreation at all.

My Husband uses Diesel in his vehicle and also his Work Trucks, and now that cuts down on his profit! He is just a small business man who moves mobile homes, this is what he has done for 44+ years, and makes less and less.

We are just simple Christian people with families trying to make a living on two paychecks, we're a prime example of those who are rapidly approaching retirement age and yet will not be able to retire and have a few enjoyable years together here on earth. I just do not know how we are going to make it! I would love to spend time with my family, enjoy the few years I figure I have left without having to struggle just to buy gasoline to be able to get to work to get a payday that buys less and less of the necessities of life.

One thing that would help save on gasoline would be, make the work week 4 (10 hour shifts) instead of 5 (8 hour shifts).

Since we are already there 2 more hours would not matter if it would save us a day's supply of gasoline getting there and back, also would save the companies in electricity etc.

Sincerely,

BRENDA NORTHERN,
Walland, TN.

Mr. ALEXANDER. Mr. President, I suggest the absence of a quorum.

The PRESIDING OFFICER. The clerk will call the roll.

The bill 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.

Mr. DODD. Mr. President, if I may, I will inform Senators as to where we are on the housing bill. Most of my colleagues know that we voted for cloture yesterday with a substantial vote of 83 to 9—not something that occurs with great frequency, getting that kind of strong, bipartisan support for the housing bill, which Senator SHELBY and I have spent weeks crafting, with the support of our members on the Banking Committee. The most recent vote was 19 to 2, on a committee with 21 members, where we ended up with strong, bipartisan support to deal with the foreclosure crisis in this country, to reform government-sponsored enterprises, and to provide for an affordable housing program. That is not to mention other provisions that came out of the Finance Committee, under the leadership of Senator BAUCUS and Senator GRASSLEY, to deal with mortgage revenue bonds, tax incentives, first-time home buyers, and counseling services. As well, we have expanded the numbers to assist individuals who are seeking to stay in their homes and are trying to achieve workouts with lenders at a cost that is affordable for them.

There are many aspects of this important bill. There is no more important issue before us today than dealing with our economy. One need only look at the headlines of the major newspapers in the Nation this morning saying that consumer confidence is the lowest it has been, according to some, in 40 years. The prospects people see for themselves and their families are very low. That in itself is a source of great concern, and it ought to be to every Member of this body—that our fellow citizens don't see a very bright future for themselves and that we need to take some steps on energy and health care costs and housing. We have 8,400 people every day filing for foreclosure. That ought to alarm everybody. We need to take some steps to allow people to work this out and stabilize this cascading housing problem.

When you have home values falling by the hour and you have problems with the lack of new starts, unemployment rates occurring, with it spreading to student loans and commercial lending, this problem has at its center the housing crisis and foreclosure crisis all across our country, and it is not localized in one or two areas.

The fact we have been able to put together a major proposal that addresses this issue, and yet as we stand here, I am stymied because one Senator has decided this bill is not going to go forward—one—because it takes unanimous consent for us to move to the bill.

We already worked out a number of amendments on this bill. People have ideas they want to bring to it, and I welcome those. We wish to get to those ideas, even take the agreements we have reached with Republican and Democratic Senators. One Senator is saying: You can't do that. Again 8,000 more people are about to lose their homes today, but one Senator has said: No, I am sorry, but my bill is more important than the 8,000 of you yesterday or the 8,000 tomorrow who will come up.

We are trying to get this bill done. There are several other Senators, Democrats and Republicans, who have ideas they wish to bring to this debate. Some we can agree to, some we cannot. But they deserve a debate and a vote on their idea. I welcome the opportunity to have that conversation with them. In many cases, we will try to work them out if we can. Where that is impossible, then this body has a right or obligation to vote them up or down, whether or not to accept those ideas.

We had very constructive conversations with the House of Representatives. I am very grateful to Speaker NANCY PELOSI who has welcomed our work here as we try to work out the differences between the House-passed bill and our bill, which are not substantial, in my view. We ought to come to some agreement on those differences. Congressman BARNEY FRANK from Massachusetts, chairman of the Financial Services Committee in the House, has been working with us so we can resolve these differences. I had hoped before we left for the Independence Day recess we would have been able to send a bill to the President for his signature. What greater signal could we send, as I said yesterday, to the American people than this Congress—highly divided, partisan beyond belief in too many cases—was able to come together on an issue that affects so many of our fellow citizens. We are this close to doing it. But I cannot offer an amendment today or invite Members to resolve their differences because one Senator has decided we should not do anything except his bill.

Unfortunately, that is how this institution works too often. As people know, I have been sitting here patiently for the last day and a half, along with Senator SHELBY, trying to resolve these matters. We have to wait until the end of this day. We will go another 5 or 6 hours doing nothing, sitting around in quorum calls and listening to speeches until we run out the clock and then have an opportunity to get to these issues.

I know there are people who care about Medicare. They care about the supplemental appropriations bill. People care about the Foreign Intelligence Surveillance Act. The majority leader has laid this out in clear, concise terms that we need to deal with these matters before we leave, and we are going to do it the hard way or the easy way. But it requires cooperation. It requires people being able to put aside their differences and let us get to the matters before us.

No other issue is more important. I apologize for getting emotional about this issue, but it is awfully difficult to go back home when people are facing gasoline prices that have gone through the ceiling, they are watching their fellow citizens lose their homes, the values of theirs, if not losing them, are declining, joblessness rising in the country, and they are wondering why we cannot manage to get anything done on their behalf.

While we cannot solve every problem, here we have a collection of bills worked out in one package, crafted by Democrats and Republicans coming together, and we cannot even get to debate the issue or bring up ideas other Members have on how we might improve this legislation.

I wanted to inform my colleagues as to why we have not been able to get much done here. It is not for the lack of leadership by HARRY REID. He has been leading and asking the other side to work with us to get this job done. As he said last evening, there are moments, we all understand, when partisan politics take over. There are other moments when you have to set that aside, and this is one of those moments.

So my urging at this moment at 11:15 this morning is, would this one Senator reconsider what he is objecting to and allow us to get to this matter. That Senator has had four different opportunities to vote on his bill. I happen to support his bill, by the way. I think I am a cosponsor of it. If not a cosponsor, I certainly have been supportive of it. I also understand there are other issues with which we have to grapple, and the housing issue is a major one for us.

We are right on the brink. In a couple of hours, we can resolve this matter, vote on it, send it to the House, and hopefully they will agree, and send that bill to the President. We can do that literally in the next 2 or 3 hours if I can only get an opportunity to raise these matters on the floor of the Senate.

I am deeply grateful to the majority leader who has done everything conceivable to make this happen. What we are lacking is the kind of cooperation required to get this bill done. This is not a bill I would have written on my money, nor would Senator SHELBY. There are 100 of us here. We all have our ideas on how we would frame these matters. But we are elected to a body that includes 99 other Members, and you have to sit down with each other and work to achieve anything. When you refuse to do that, you make it impossible to step forward.

My urging at this hour of the morning is let us get to this bill, allow these Members—Democrats and Republicans—to have their ideas brought up, resolved, or voted on so we can conclude this work, send it to the House, and hopefully to the President of the United States for his signature.

Mr. President, I ask unanimous consent that the time the Senate spends in quorum calls during today's session count toward the time postcloture.

The PRESIDING OFFICER (Mr. CASEY). Without objection, it is so ordered.

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

The PRESIDING OFFICER. The clerk will call the roll.

The bill clerk proceeded to call the roll.

Mr. CRAIG. 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. CRAIG. Mr. President, I ask unanimous consent to speak as in morning business for up to 10 minutes.

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

EMERGENCY SUPPLEMENTAL APPROPRIATIONS

Mr. CRAIG. Mr. President, I am filing at the desk today an amendment to the emergency supplemental that will be coming over, or is already here, from the House to reinsert a provision that the Senate put in our version of the emergency supplemental before it went to the House for their consideration. This amendment includes a 1-year funding for the Secure Rural Schools and Community Self-Determination Act. What that simply means is timber-dependent communities and school districts across the country would receive their level of funding for one more year until such time as we can fully reauthorize the act.

The Senate Finance Committee, in the extender legislation, has a reauthorization in it. But we don't know whether that will come immediately following the Fourth of July recess or some time into the summer. Here is the reality of the emergency funding about which we are talking.

There are 775 counties and 4,400 school districts in 42 States that is now making critical hiring decisions for the coming school year that will start at the end of August. These school districts need this money. It is quite simple. They have no other way of raising the resource that is now terminated as a result of our inability to move in the appropriate fashion.

What we are talking about is 9 million schoolchildren who will be affected. In my State, numerous school districts and potentially several hundred teachers are getting their termination notices because there simply is no money to hire or to continue to hire them. What are we talking about? A timber-dependent county, a county where 90 percent of its landscape is owned by the Federal Government and 10 percent is owned in fee simple and pays taxes into the school district, and they have no possible way of raising enough revenue when a third or a half of the revenue came from those public lands originally through timber sales.

Senator WYDEN and I some years ago created this legislation. It is known as Craig-Wyden or Wyden-Craig. We have helped these school districts, and we are fumbling here trying to accomplish that. We put it in our version of the supplemental. Now the supplemental comes back. It is not a pure document. It is not exclusively a military funding document. It has veterans money in it. It has emergency money in it for FEMA to handle the disastrous flooding going on in the State of Iowa.

In my State of Idaho, in Clearwater County, we have a disaster. It isn't flooding. It isn't the Clearwater River over its banks. It is a school district that is dramatically having to diminish the quality of education because this Congress has not acted in a timely fashion, and we simply roll over and say: Oh, well, we will probably get it done in July, but then again it might be August.

It is now we must act because in August, that school will be back in operation and that schoolteacher who was teaching some level of academics in that high school or grade school will be gone because the money has not been replenished. I call that an emergency. I call that a need to address the supplemental.

I have talked with the chairman of the Appropriations Committee, I have talked with the ranking member. They, too, view this as a crisis. I know we all have our priorities, but in this case Senator CRAPO, Senator SMITH, Senator DOMENICI, Senator STEVENS, Senator MURKOWSKI, Senator BENNETT, and others agree with me. And there are numerous Senators on the Democratic side of the aisle. I have spoken a few moments ago with Senator WYDEN. The State of Oregon will be in crisis if we don't resolve this in a reasonable fashion.

This is simply a 1-year extension of funding at current levels. It is not a new reauthorization. It represents about $400 million in the chairman's mark that moved out of here before. So this amendment, as I speak, will be filed at the desk, and I would hope, in our effort to move legislation and finish the supplemental, the emergency supplemental, that we also recognize there are some domestic emergencies here at home, such as the flooding on the Mississippi, such as tornado-ravaged areas, such as school districts having to fire needed and necessary educators to provide for the quality of education of their children because Congress did not responsibly fund public land, Federal public land-dependent counties, and created the crisis by our inaction.

With those comments, I yield the floor, and 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. DORGAN. 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. DORGAN. Mr. President, I ask unanimous consent that following my presentation, if there is a Republican speaker on the floor, they be recognized next, as has been the course, and that Senator BROWN of Ohio be recognized as the next Democratic speaker.

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

DEPARTMENT OF DEFENSE CONTRACTING

Mr. DORGAN. Mr. President, yesterday, there was a hearing in the Congress, on the House side, dealing with someone I have spoken about on the floor at some length, and I wish to talk about that hearing and what it means. Then, following that, I wish to speak about the bill I introduced yesterday dealing with the price of gas and oil and oil speculation.

First, let me talk about the hearing yesterday and what we learned about the Defense Department and the State Department and others dealing with this man. This man's name is Efraim Diveroli. He is 22 years old and the president and chief executive officer of a firm that was awarded $300 million in contracts by our Federal Government. So this is a guy who took over a shell corporation that his dad had, and he was awarded $300 million in Defense Department contracts. He was the president of the company at age 22. He had a vice president, though. It is not as if the company was understaffed. This is a photograph of his 25-year-old vice president, who is a massage therapist—David Packouz. He was called a masseur, or massage therapist. So these two guys ran a company in Florida that had an unmarked office door. At one point, Mr. Diveroli, the CEO, says he was the only employee and at another point it was he and his vice president, the massage therapist.

They got $300 million from the Federal Government, from the Defense Department, and they were to provide weapons and ammunition to the Afghan fighters because our Defense Department wanted to help the Afghan fighters take on the Taliban in Afghanistan. Well, here is what these folks provided to the fighters in Afghanistan—40-year-old Chinese cartridges which came in boxes that were all taped and falling apart—this is an example. They were made in China in the mid-1960s. It is pretty unbelievable. The fighters in Afghanistan said this was junk coming from this company that got $300 million in contracts from the Defense Department.

Now, I had the three-star general come to my office. I am on the Appropriations Subcommittee on Defense, and we shovel a lot of money out the door for a lot of these Defense needs, some legitimate, some not, and I had a lengthy meeting with the three-star general who was in charge of this. I said: How on Earth could you have given a contract to a company run by a 22-year-old, who had very little experience, running a shell company his dad owned, a company where his vice president was a massage therapist? This is a joke, except it is not a joke when the American taxpayers are fleeced. He gave me a hundred excuses, this three-star general did.

But all he would have had to do is go to MySpace. Pull this man up on MySpace, the president of this company, and here is what he says on MySpace.

I like to go clubbing, go to a movie. I have taken a really liking towards fine Scotch whiskey. I have had problems in high school, so I was forced to work most of my teen years.

He probably grew up a little fast.

Got a decent apartment. Am content for the moment.

Go to MySpace. Is this the CEO of a company you want to give $300 million in contracts to?

This is an outrage. So a hearing was held yesterday, and here is what the hearing disclosed. There was a watch list at the State Department. This company—these guys—had small contracts with the State Department, and the State Department had compiled a watch list of 80,000 individuals and companies suspected of illegal arms transgressions and other things, including this company. Well, the fact is, the Defense Department never checked the State Department. Contracts have been pulled from this little company, but the Defense Department never checked, so they give them a $300 million contract, or a series of contracts, worth $300 million.

The reason they say it didn't show up is because they don't check on contractors that maybe are bad contractors if the contract is less than $5 million. That is, apparently, an asterisk.

I mean, I don't understand this at all. Government officials failed to review several of these contracts from this little company that had been canceled or delayed. They never raised red flags because they fell under the $5 million contract value that was the warning threshold. The contracting officer with the Army Sustainment Command had overruled a contracting team that raised concerns about this company. They said there was substantial doubt, but nonetheless the company got the contracts. Listen, this is shameful. We ought to do—and, yes, we in the Senate as well—ought to do a detailed investigation. We should bring people here under subpoena, if necessary, to find out who made these judgments and why they are still working for the Federal Government. Why aren't they long ago gone from the Federal payroll? This is not the end of it or all of it. I have spoken about dozens and dozens of contracts that are similar to this.

At any rate, yesterday, this hearing occurred in the House. I commend Congressman WAXMAN, who has been doing some of the most significant work in the Congress in investigating this. We need to investigate this on the defense spending side as well, those who appropriate this funding. This is shameful, and I think everybody involved in it ought to be embarrassed. We are shoveling money out the door to support the war in Iraq and Afghanistan.

I have shown pictures on the floor of the Senate of one-hundred dollar bills wrapped in Saran Wrap the size of bricks, and the guy distributing that cash in Iraq said he told contractors our motto was: We pay in cash, you bring a bag. It was like the Wild West, he said.

You think money isn't wasted? You think there isn't stolen money over there, when you are distributing money out of the back of a pickup truck and we are airlifting one-hundred dollar bills on C–130s, flight after flight, full of cash?

This is unbelievable what is happening with this contracting abuse, and this is one, small example.

I think all those involved in it ought to be brought before congressional committees and that we demand answers from them. Who is responsible, who is accountable on behalf of the American taxpayer? If they can't answer, they ought not be on the public payroll.

That takes care of my need for therapy to talk about this issue. It is almost unbelievable that the American taxpayer, en masse, is not gathering outside this Capitol saying, when we hear this kind of thing, we are outraged. So let me be outraged on behalf of them and say this cannot be allowed to continue.

SPECULATING ON OIL AND GAS

Mr. President, I came to the floor to talk about the issue of the price of gasoline. I had a guy in my office the other day that was the president of one of the larger corporations and this company was engaged in trading and all these issues. He was a fast talker. I mean, it was unbelievable to me. When he finished talking, I was out of breath. He was one of these guys who talked and talked and talked. His point was: Look, everything is working fine. The price of oil, the price of gas, that is what the market says it is. I said: Well, it appears to me there are substantial amounts of speculation. Over a period of time in this world we have seen some dramatic growth in speculation in certain areas. When it happens, the markets break and you have to come back and herd the speculators out and have markets available for the legitimate transactions.

This person said: Speculation, are you kidding me? These are normal transactions on the commodities market, the futures market for oil, as an example. There is supply, demand, and people are involved. I said: Well, tell me this, if you would: What has happened in the last 15 months? Tell me what has happened with respect to supply and demand that justifies doubling the price of oil in the futures market? Can you tell me? Then he spoke for 45 minutes, almost uninterrupted, and had not answered the question.

I said: That makes my point. At the end of this meeting, you can't answer the question because nothing has happened in the last 15 months that demonstrably alters the supply-and-demand relationship or that justifies what has happened with the price of oil. Nothing justifies doubling the price of oil in the last 15 months. The only conclusion you can come to—and many have and I certainly have—is that we have a carnival of speculation in the futures market by a lot of big-time speculators interested in making money. They do not want to own oil or take possession of oil. They do not want to use oil. They wouldn't be able to recognize oil at first blush. They wouldn't even be able to lift a 30-gallon drum of oil. They just want to make money speculating on oil.

So if we have a bunch of speculators in this carnival of greed who rush into these markets and drive up prices well beyond what the fundamentals would justify, it breaks the market. If the market is broken, we have a responsibility to set it right. When the commodities market for oil was established in 1936 by legislation, Franklin Delano Roosevelt said we have to be careful to have the tools to stop the speculators from taking over these markets. There is a specific piece in the 1936 act that talks about excessive speculation.

There is excessive speculation in the marketplace now, and it is running up the price of oil and gas. It is hurting every single American family, it is damaging this economy, it is dramatically injuring industries—such as airlines, truckers, farming, and others. The question is, What should we do about it?

Should we sit here somewhere in a crevasse between daydreaming and thumbsucking and decide to do nothing? Or should we finally decide we have to take some action when a market is broken?

Let me go through a couple charts. I have used them before so it is repetitious, but it seems to me it is useful repetition in describing a very serious problem.

Here is what has happened to the price of oil. There is no event in here that suggests this should be the price of oil. You double the price. There is nothing in here that justifies doubling the price. The fact is, people are driving less in this period. There were 4.5 or 5 billion fewer miles driven in this country in a 6-month period; 4.5 to 5 billion fewer miles driven, less gasoline used. That means lower demand. At the same time, in the first 4 or 5 months of this year, we saw crude inventory stocks rise, not fall. If inventory is going up and demand is going down, what is happening to the price of oil and gasoline? It is going up? That doesn't make any sense. That is not logical. That is a market that is broken.

Let me analyze what all that means. This is what a commodity exchange looks like. This is the New York Mercantile Exchange, called NYMEX. There are a bunch of folks who trade. They come to work and do a legitimate job. They are trained to do this job, and they are trading on behalf of others. But what has changed is, instead of it being just a legitimate market for

hedging between those who produce and those who consume, wanting to hedge a physical commodity, we have now people in this market who have no relationship to this commodity.

Will Rogers described it a decade ago. He described people who buy things they will never get from people who never had it, making money on both sides. That is speculation.

Here is what some folks have said about these issues. Let me describe, first, before I describe what some other folks have said about it, the 1935 act. It says, this is the commodities act that establishes this—

> This bill authorizes the Commission . . . to fix limitations upon purely speculative trades and commitments. Hedging transactions are expressly exempted.

The point is the underlying bill authorizes the regulator, the Commodity Futures Trading Commission, to fix limitations on purely speculative trades. That is exactly what the Commission is supposed to do. But the Commission has largely taken a vacation from reality. It seems to have no interest in regulating. I am talking especially about the chairman and those who control the Commission.

Here is Fadel Gheit, 30 years as the top energy analyst for Oppenheimer & Co. He testified before our committee. I have spoken to him a couple times by phone. Here is what he says:

> There is absolutely no shortage of oil. I'm convinced that oil prices should not be a dime above $55 a barrel. I call it the world's largest gambling hall. . . . It's open 24/7. . . . Unfortunately, it's totally unregulated. . . . This is like a highway with no cops on the beat and no speed limit and everybody's going 120 miles an hour.

I encourage my colleagues, if you want to understand what is happening in this market, call Mr. Gheit. He has been involved as an energy trader with the large companies. He will give you an earful. I have had the opportunity to hear him not only in committee, but I called him as well and had a conversation about speculation.

The president of Marathon Oil Company: ''$100 oil isn't justified by the physical demand of the market.''

I am going to have a hearing this afternoon with the head of the Energy Information Administration, EIA. I fund this agency in my appropriations subcommittee—Mr. Caruso heads it. I wish to show what the EIA has projected on all these occasions for the price of oil and gasoline.

In May of last year, they projected this yellow line. That is where the price would go. In July of last year, they projected this yellow line. In September, they projected this. Do you see what the momentum is? In terms of what they are projecting, in every case they are demonstrably wrong—not just wrong by a little, wrong by a lot.

We spend over $100 million for this agency to get the best and brightest, to determine as best they can what is going to happen to the price of oil. They have always believed the price is essentially going to remain about the same or go down. The price, however, has gone way up. Why? Because unbridled speculation exists in this market with speculators driving up these prices.

Despite that, the EIA testifies and has testified repeatedly: They see some speculation but not very much.

If they believe this represents the fundamentals in the marketplace, how on Earth could the best estimators in an agency we spend $100 million a year on—how could they be this wrong? There is something fundamentally wrong with that piece.

Finally, 2 days ago, the House released a report that was done by a House subcommittee that talked about the explosion of speculation on the futures market. It went from 37 percent speculative trades in 2000 to 71 percent of the trades now that are ''speculation.''

I describe all that to say I have introduced legislation. I am talking to Republicans and Democrats in the Senate, hopeful of garnering cosponsors to move this legislation that addresses this issue by saying to the Commodity Futures Trading Commission: You have the authority to do the following, and you should do the following, just going back and reading the underlying law that created you. No. 1, identify those trades that represent legitimate hedging trades between a producer and a consumer with a physical product in which they wish to hedge risk. That is precisely what the market was established for. Distinguish that kind of trading from all other trading which represents nonlegitimate hedging, or speculation.

Once you have determined what body of trading represents speculative trading—and it has been a carnival of greed, in my judgment, rushing and pushing up the amount of speculative trading, as I have shown—once you have done that, I suggest we impose a 25-percent margin on the speculative trading that is going on, in order to try to wring some of that excess speculation out of this market.

No. 2, I suggest the regulator have the opportunity to use their authority to either revoke or modify all their previous actions, including their ''no action'' letters, in order to shine the light on and see and regulate all the transactions that have to do with American products or trading in this country.

Strangely enough, the Commodity Futures Trading Commission itself said, for example, the Intercontinental Exchange, largely owned by American interests, that trades in London—that you can come here, you can set up an office in Atlanta, you can trade on computers in Atlanta, and we will decide of our own volition that we will not regulate you and you will be outside the purview of our sight. That is an unbelievably bad decision, and it needs to be revoked—not just that decision but so many others similar to it.

It would be nice if we would have a regulatory body that says our job is to regulate. We pay for regulatory bodies for the purpose of wearing the striped shirts; they are the referees, they call the fouls.

I think, having taught some economics in college, that the best allocator of goods and services in this country that I know of is the marketplace. Markets are wonderful. I am a big supporter of markets. But when markets are broken, the Government has a responsibility to act. We have a regulator that has been oblivious to open markets, in fact has accelerated and actually helped break them. I believe our responsibility at this point is to set this regulator straight and decide here are the conditions by which we own up to the responsibilities of the original act—allowing for legitimate trading and hedging but trying to shut down the speculation that has driven up the price of gasoline and that injures every family and every business in this country and damages the American economy.

My hope is, in the coming couple days and weeks, that Congress, and the Senate especially, will be able to consider the bill I have authored. There are other good ideas as well. I welcome all of them. But I think this is not a circumstance in which one of the options for the Congress is to do nothing. The American people expect more and deserve more and I think should get more from this Congress.

I have spoken to Senator REID and many others, who are also very interested in moving on these issues. I hope it will be bipartisan. I am very interested in having Republicans and Democrats work on perfecting these issues so we can take action very soon.

I yield the floor.

The PRESIDING OFFICER. The Senator from Oklahoma.

Mr. INHOFE. Mr. President, I ask unanimous consent that I be recognized as in morning business to be followed by the Senator from Ohio, Mr. BROWN, and he would be followed by the Senator from New Hampshire, Mr. GREGG.

The PRESIDING OFFICER. Is there objection?

Mr. FEINGOLD. Mr. President, I ask I be added after Senator GREGG.

Mr. INHOFE. And the Senator from Wisconsin be after Senator GREGG.

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

Mr. INHOFE. First of all, it is my intention—which I will not do right now because I know what would happen—to introduce an amendment to the housing bill that makes eminent sense. But I know and I have been told it would be objected to, so I will not do it, but I will explain it in hopes that at a later time we will be able to get this in.

The amendment I have is simply a one-page amendment. What it does, it would prohibit individuals who annually make more than $75,000 and couples making more than $150,000 from

receiving taxpayer-backed bailouts of troubled mortgages. The main provision of the housing bailout bill is a program to allow troubled mortgage holders to refinance their mortgage into a Government-insured loan through the FHA. The bill allows the FHA to take on up to $300 billion in troubled mortgages, into the taxpayer-backed program.

In this bill, as currently written, the value of an eligible loan under the FHA is $550,000. The nationwide average value of a home is roughly $200,000. The average value of a home in Oklahoma is just under $150,000.

I believe it is bad policy to put taxpayers on the hook for borrowers who took on more than they could afford and lenders who made bad loans to begin with. It is entirely unacceptable to have the Government put taxpayers on the hook for someone who qualified for a loan more than two or three times what the average American can afford.

When Congress passed the economic stimulus package, Democrats vehemently argued certain people make too much money to benefit from a handout from the U.S. Government; specifically, eligibility for the full-time stimulus was capped at $75,000 for an individual and $150,000 for couples. So this amendment says that if you are too rich to get a full stimulus check, you are too rich to get a bailout.

Another provision of the housing bill provides an interest-free loan of $8,000 for first-time home buyers and applies income limits of $75,000—there it is again—for individuals and $150,000 for couples. It is perfectly reasonable to apply those same income standards for individuals who are getting a taxpayer-backed bailout on their mortgages.

Someone with a $550,000 mortgage pays approximately $3,300 a month on housing alone—that is assuming a 30-year fixed-rate mortgage at a 6.3-percent interest rate. That comes to $39,600 a year in mortgage payments alone. According to the Bureau of Economic Analysis, average per capita income in the United States, in 2007, was $38,600; therefore, someone with a $550,000 mortgage will be spending around $1,000 more on their home alone than the average American makes in an entire year.

The Congressional Budget Office came out and warned that 35 percent of the loans refinanced through the program will eventually default anyway. CBO also highlighted the perverse incentives in this bill, noting that banks will use the program to offload their highest risk loans to taxpayers. CBO said:

> . . . the cumulative [default rate] for the program would be about 35 percent and that recoveries on defaulted mortgages would be about 60 percent of the outstanding loan amount. Those rates reflect CBO's view that mortgage holders would have an incentive to direct their highest risk loans to the program.

Washington should not be holding folks who have been responsible for their mortgage liability responsible for the irresponsible decisions of others. We should not be putting taxpayers on the hook for bad loans made by irresponsible lenders and borrowers. We most certainly should not be putting taxpayers on the hook for individuals who can afford two or three times what the average taxpayer can afford.

This is especially true when there is no guarantee the program would not have to be bailed out after the additional taxpayer dollars. There is a very good chance, in fact, that this program will require additional tax dollars; that this is just the beginning.

On June 10, the New York Times reported that the FHA—the agency we are mandating in this bill to take on the worst loans made during the subprime housing crisis—currently faces $4.6 billion in losses, four times the amount of losses than the previous year and over 20 percent of its capital reserves.

The day before the New York Times story, Reuters reported that the head of FHA, Brian Montgomery, has serious concerns about the housing legislation we are now considering:

> Some in Congress are advancing legislation . . . that could be problematic for the economy and the country.

He further said:

> FHA is designed to help stabilize the economy . . . it is not designed to be a lender of last resort, a mega-agency to subsidize bad loans.

Yesterday the Wall Street Journal reported the FHA is having serious trouble with the bad mortgages that are already on the books and will likely require an appropriation of over 1 billion in Federal tax dollars as soon as next year.

This would be the first instance of a government subsidy for the FHA since it was created in 1934.

The Journal reported:

> The FHA, which essentially is filling the void left by the collapse of the subprime market, will request a Government subsidy for the first time in its 74-year history. The agency says it will need $1.4 billion next year.

The American taxpayer, the taxpayers in my State of Oklahoma, should not be put in a position where they are ultimately responsible for the irresponsible decisions of others, and they certainly should not be on the hook for relatively well-off individuals, not to mention large lending companies that made poor financial decisions.

Lastly, let me say we are using the same standard, this $75,000 per individual or $150,000 for a joint return, that would be the same level we are using in the rest of this bill and other programs, including the economic stimulus program.

I yield the floor.

The PRESIDING OFFICER. The Senator from Ohio.

MINIMUM WAGE

Mr. BROWN. Mr. President, 70 years ago today President Roosevelt signed the Fair Labor Standards Act into law. After two decades of devastating Supreme Court opposition, a Supreme Court in those days with a similar bias against workers that our Supreme Court has today—think of Ledbetter and so many other cases they have made. But after two decades of devastating Supreme Court opposition, and 3 years after that Supreme Court declared the National Industrial Recovery Act unconstitutional, Americans finally were assured of a minimum wage, reasonable work hours, and an end to child exploitation.

Senator Hugo Black, who sat at this desk in the Senate in the 1920s and 1930s, was fundamental in this historic achievement. Black, in the early 1930s, prior to Roosevelt becoming President, had introduced legislation calling for a 6-hour workday. It was considered so radical and so controversial that the 8-hour workday signed into law by President Roosevelt was considered more reasonable and more palatable, and the Congress went along.

Black, by this time, by the time the minimum wage actually went into effect, was a member of the Supreme Court appointed by President Roosevelt. Black, in those years leading up, joined with President Roosevelt, Labor Secretary Frances Perkins, and labor leader Sidney Hillman to craft legislation that would withstand judicial challenge. It was not an easy fight, but progressives stood firm for social justice and for economic justice. They said ''no'' to worker exploitation and they created a path to the American dream for millions. As the minimum wage floor was established, other wages went up also, and more and more workers joined the middle class and as a result came out of poverty and joined the middle class. For the first time in our Nation's history, people who worked hard were assured of a reasonable standard of living and decent labor conditions.

Where is that commitment today? Today's low- and middle-income men and women have been hit hard by the failed economic policies of the last 7 years, bad trade policy, bad tax policy, all up and down. We see what has happened to our economy in the Presiding Officer's home State of Pennsylvania, my State of Ohio, from Lima to Zanesville, and everywhere in between.

With gas at $4 a gallon, rising health care costs, skyrocketing food prices, it is more and more difficult for hard-working Americans to keep pace. Now 70 years of progress is eroding. Income inequality is the worst it has been in this country since before Roosevelt, since the Depression and the New Deal gave birth to the minimum wage.

Tim, from Cleveland Heights, OH, a suburb southeast of Cleveland, used to donate to food banks, soup kitchens, and charities before his family fell on hard times. He never thought he would need that help from others. But as the cost of living went up, Tim, who has a full-time job—his wages did not keep

pace. It took 3 months of financial strain before Tim and his family realized they needed to use the food bank he had been contributing to in the past.

Tim used to consider himself middle class. He does not picture himself that way anymore. But there is reason for hope. In 2007, this Congress, the House and the Senate, passed the first minimum wage increase in 10 years. Workers now earn $5.85 an hour, and will get a raise of 70 cents next month. This is a positive step but just the first. We must continue to push for a living wage for all of Ohio and America's hard-working men and women.

Today someone earning a minimum wage and working full time makes only $10,700 a year. That is $6,000 below the poverty line for a family of three. That, put mildly, is unacceptable. Congress must work to index the minimum wage to inflation to give workers relief in these hard times.

Under current policy, wages stay low as prices go up. Wages in real dollars are far below the minimum wage, and in real dollars are far below what it was 40 years ago. Hard-working Americans are at the mercy of politics and business lobbies for an increase in pay, while CEOs of corporations such as Exxon are reporting record paydays. This is unconscionable.

Franklin Roosevelt said:

> A self-supporting and self-respecting democracy can plead no justification for the existence of child labor, no economic reason for chiseling workers' wages or stretching workers' hours.

Like Roosevelt, we must stand for social and economic justice. If social justice and economic justice works for hard-working Ohio families, hard-working American families, and social and economic justice builds a better society, we must do our part to ensure that those who want to work can make a living wage.

We must fight in this Chamber for families who are struggling to stay above the poverty line, families who work full time and play by the rules, pay their taxes, are involved in their communities, raising their kids. We must ask ourselves what kind of country we want this great country to be.

I yield the floor.

The PRESIDING OFFICER. The Senator from New Hampshire is recognized.

Mr. GREGG. Mr. President, I want to speak on the bill, not in morning business.

I am concerned we are not getting to a lot of the issues in this bill we should get to. Although I am supportive of the underlying bill, one of the issues we are not getting to, and I do not understand it, is the need to extend the renewable tax credits.

Senator ENSIGN and Senator CANTWELL have brought forward an amendment to accomplish this. The renewable tax credits are those tax credits which create an incentive for using things that are more energy efficient: making your home more energy efficient, using solar, using wind, using wood pellet stoves, things which are basically alternative sources of energy, or doing additions to people's homes which make their homes more energy efficient.

At a time when gas prices are extraordinarily high, and oil prices are going through the roof, especially home heating oil—in fact, it is estimated home heating oil will be about $4.77 this week—it is essential that we do whatever we can as a government to encourage the use of alternative sources and renewables and to encourage people to be more energy efficient as they either build a new home or they refurbish and renovate their old homes.

That seems to be common sense to me. It has such common sense that this proposal, the extension of the renewable tax credits, passed this body with 88 votes. However, for some reason it is not being allowed to be brought up on this bill.

It is very appropriate for this bill, it is even germane to this bill, as I understand it, which is a pretty heavy test to pass. But it is not being allowed to be brought up for a vote. I cannot understand that. This is such an important action from the standpoint of giving consumers and people who are struggling with high energy cost options. It is something we should rush to do. It is not something that should be delayed by the leadership of the other side of the aisle. But that is what is happening.

I join with Senator ENSIGN and Senator CANTWELL and strongly encourage the leadership of the Senate Democrats to allow a vote on this amendment and let it pass. If the House does not want to take it, that is their choice. But I suspect the House will, because, again, it is common sense, and commonsense ideas usually lead to common ground, which leads to something happening around here.

When you have got 88 votes for something, it should be done. In the larger context of the energy crisis which we face, this type of step is critical. It is not going to solve the whole problem, we know that, but it is certainly part of the matrix of moving to a more positive result and getting our energy costs under control.

People in New Hampshire—this is true across the country, but people in New Hampshire are thinking about next winter and the cost of home heating oil is going to be extraordinary. It looks as if this will add tremendous stress, especially on people who live on a fixed income but even those who were able to adjust their income through working are going to find it difficult. They are going to find it difficult, because at $4 a gallon, if they have to commute to work—and most people in New Hampshire have to commute; it is a rural State from the standpoint of moving around—they are going to find it much more expensive to commute. Most people use oil to heat their homes, and with home heating oil at over $4.50 a gallon, you are talking about a doubling of the oil costs from last year. That is going to overwhelm the pocketbooks and the economic situation for a lot of people in New Hampshire. It is going to be a real hardship. We need to do something which will relieve that.

This is one element of extending the renewable energy tax credits. But another major element of it is for us to have an energy policy at the national level which essentially promotes American production of energy. We should produce more American energy and obviously we should consume less. There is no question that conservation is a critical element, as are renewables. But on the production side, there is no reason that we as a nation have locked up our capacity to use our resources in order to relieve the pressure on America's people who are now having to pay these outrageous prices for energy, and with the revenues from those purchases going overseas, in many instances to nations which do not like us all that much.

In addition, obviously every time we send a dollar overseas, it is a dollar that can't be invested here in more jobs, in more economic activity, and the fact that we have now tripled what we are exporting in the way of resources, in the way of dollars, again to countries in some instances that do not have a great deal of admiration for us, in many ways are antagonistic to us—the exportation of those huge amounts of dollars, over $300 billion a year, is money which we need here in America to make ourselves stronger.We are heading down a very dangerous road here when we do not recognize that we need to produce American energy and keep those dollars in the United States, rather than shipping them overseas.

Now, from the other side of the aisle we heard these proposals, we heard it from the Senator from North Dakota, that the way to address this is to litigate; the way to address this is to regulate; the way to address this is to tax.

Well, none of those initiatives add more resources to the mix. And this is, in large part, an issue of supply and demand. The world is expanding. India and China have a population base of almost 2.5 billion people between them. We have 300 million people. They are growing economically, and they are using a lot of energy to do that.

We have to recognize that if we are going to remain competitive and productive and strong, we have got to produce energy here, we have got to conserve it—we have to produce more of it, and we have to use less.

As part of that initiative, we need to look at ways and places that we can produce more, areas such as oil shale, for example. We have more reserves in oil shale, three times as much reserves in oil as Saudi Arabia. The estimate is between 2 and 3 trillion barrels of reserves in oil shale alone. We have huge

reserves in Outer Continental Shelf oil and gas. But both of those types of resources are being locked down by opposition, again regrettably by the other side of the aisle, which says we cannot drill in the Outer Continental Shelf except in the Gulf of Mexico, and we cannot use the oil shale reserves which are available.

In fact, 100 percent of the oil shale reserves have been put off limits by policies of the other side of the aisle, supported by their national Presidential candidate, Mr. OBAMA, and 85 percent of the oil in the lower 49 that is potentially out there on the Outer Continental Shelf has been put off limits, again, by the other side of the aisle and, again, supported by Senator OBAMA. That is a huge amount of reserves which we are leaving in the ground while we buy oil at exorbitant prices from Venezuela, a country led by an individual who hates America; oil from Iran, a country where the entire government hates America and anything western.

Why do we do that? That makes no sense at all. Clearly, we have these reserves here, and they can be recovered in an environmentally safe and sound way. The example on the Outer Continental Shelf was shown when we saw Katrina, a horrific disaster, a force 5 hurricane that came up the Gulf of Mexico and wiped out one of our great cities, New Orleans. Virtually no oil or gas was spilled as a result of Hurricane Katrina. Yet it went right across the Gulf of Mexico where all the major oil and gas rigs are. That proved beyond any question that gas and oil can be produced on the Outer Continental Shelf with environmental safety.

There is a lot of it out there that has been locked down. Eighty-five percent of the potential leaseholds are no longer available because of the position taken by the other side. In the area of oil shale, these huge reserves which may be available to us are recoverable by drilling underground and by doing almost all the effort to recover that oil underground so that what actually comes out of the ground is virtually the product that is used. We could essentially get all the oil we need in order to operate the armed services of the United States, the biggest consumer of oil in this country, simply from oil shale because it is a heavy oil which is diesel-like fuel. Yet that is locked down; 100 percent of that is locked down by the policies of the other side of the aisle.

We can move on, of course, to another source that we need to use, which is nuclear power. Nuclear power is essential if we are going to produce the electricity necessary to make this country productive and prosperous and to meet the need to reduce greenhouse gases which are creating problems for us as a culture and for the world. The other side of the aisle has resisted and stopped construction of new nuclear powerplants. We are uniquely familiar with this in New Hampshire. We had the last nuclear powerplant that went on line, Seabrook. It took us an extra 10 to 15 years to build that plant beyond what it should have required. It cost us almost $1 billion more than it should have cost, and almost all of those costs and delays were a function of protests undertaken by very activist elements led primarily by the Democratic Party within the State of New Hampshire.

There has never been an apology for what they did to the people of New Hampshire—over a billion dollars of extra energy costs put on the people of New Hampshire, a direct tax, and yet Seabrook, once it was turned on, has delivered power for almost 18 years and has delivered it safely and at a fair price, to the point where New Hampshire actually exports energy to surrounding States as a result.

We know nuclear power can be safe. Nobody has ever died from nuclear power as compared with other types of power sources. We should not bar its development; we should encourage its development. We need new nuclear powerplants. We need new sources. We need to find and explore for new sources of energy such as are available on the Outer Continental Shelf and in oil shale.

Yet, regrettably, what we run into here is that everybody can agree on the need for conservation, but it doesn't appear we are going to agree on the need for renewables because that amendment is being stopped. But the idea that we should go out and produce more American energy so we are not buying energy from Venezuela and from Iran, that is rejected, regrettably, by the other side of the aisle.

The policy presented in their energy plan was taxation, litigation, and regulation. We heard it again today. We just regulate our way into a surplus of supply. That is not going to happen. You can't take a trial lawyer and stick him in your oil tank, in your house, and get energy. The simple fact is, giving the trial lawyers the ability to sue Venezuela isn't going to produce any more energy for the United States.

What it is probably going to do is create an atmosphere where countries that dislike us within the OPEC group are going to say: The heck with you. You want to create a lawsuit against us, we don't have to sell you the energy or, when you send us your money, we don't have to reinvest in the United States. It is cutting off our nose to spite our face. It is a policy that is virtually absurd on its face because it will have so little productive effect on the price of energy.

The same could be said for taxation. We are going to create a confiscatory tax on companies that produce energy, American companies. Those companies only control about 6 percent of the world's reserves. The rest of the world's reserves are controlled by nations such as Saudi Arabia, Venezuela, and Iran. They are not going to be subject to that tax, their companies. So that puts our companies immediately at a competitive disadvantage.

What do these companies which have been so vilified around here and such easy targets for the online press release really do with those profits? They do two things: They reinvest them in trying to find more energy, which will hopefully be American-produced energy, which is good because more supply reduces cost, or they distribute those profits to shareholders. Who are the shareholders? Most Americans are shareholders, and most American shareholdings are in these companies.

If you have a 401(k), if you are a member of a pension fund, if you are a union employee and you have a pension fund, the odds are good that pension fund is invested in one of these companies that are going to be subject to this brand new taxation coming from the other side of the aisle. There will be less money to explore and less money to distribute back to working Americans through their pension funds and dividends. That is not going to produce any more energy; in fact, it will produce less. That, again, accomplishes nothing except putting out a press release which has nice cosmetics, but when you look behind it, it has no substance as to addressing the fundamental issue.

The fundamental issue is this: We, as a country, need more American energy production, and we need to consume a lot less. There are two sides to the coin. We also need a renewable policy that works. That is why this amendment offered by Senators ENSIGN and CANTWELL, and which has such broad support here, should be voted on. It is a no-brainer. Let's at least move this part of the package of responsible energy policy. I cannot understand why it is not being voted on, especially since it is relevant to the housing bill. We should pass this in a nanosecond because it will at least help in a small way toward moving our energy policy in the right way, which is toward more renewables as we address the issue of production and conservation along with it.

I yield the floor.

The PRESIDING OFFICER (Mr. MENENDEZ). The Senator from Wisconsin.

FISA AMENDMENTS ACT OF 2008

Mr. FEINGOLD. Mr. President, I strongly oppose H.R. 6304, the FISA Amendments Act of 2008. I will vote against cloture on the motion to proceed. This legislation has been billed as a compromise between Republicans and Democrats. We are asked to support it because it is supposedly a reasonable accommodation of opposing views.

Let me respond to that as clearly as possible. This bill is not a compromise; it is a capitulation. This bill will effectively and unjustifiably grant immunity to companies that allegedly participated in an illegal wiretapping program, a program that more than 70 Members of this body still know virtually nothing about. This bill will

grant the Bush administration, the same administration that developed and operated this illegal program for more than 5 years, expansive new authorities to spy on Americans' international communications.

If you don't believe me, here is what Senator BOND had to say about the bill:

I think the White House got a better deal than even they had hoped to get.

House minority whip ROY BLUNT said:

The lawsuits will be dismissed.

There is simply no question that Democrats who had previously stood strong against immunity and in support of civil liberties were on the losing end of this backroom deal.

The railroading of Congress began last summer when the administration rammed through the so-called Protect America Act, or PAA, vastly expanding the Government's ability to eavesdrop without a court-approved warrant. That legislation was rushed through this Chamber in a climate of fear—fear of terrorist attacks and fear of not appearing sufficiently strong on national security. There was very little understanding of what the legislation actually did. But the silver lining was that the law did have a 6-month sunset. So Congress quickly started working to fix the legislation. The House passed a bill last fall. The Senate passed its bill, one that I believed was deeply flawed, in February.

As the PAA 6-month sunset approached in late February, the House faced enormous political pressure simply to pass the Senate bill before the sunset date, but the reality was that no orders under the PAA were actually going to expire in February. Fortunately, to their great credit, the House stood firm in its resolve not to pass the Senate bill with its unjustified immunity provisions. The House deserves enormous credit for not buckling in the face of the President's attempts to intimidate them. Ultimately, the House passed new legislation in March, setting up the negotiations that have led us here today.

I think it is safe to say that even many who voted for the Protect America Act last year came to believe it was a mistake to pass that legislation. While the House deserves credit for refusing to pass the Senate bill in February and for securing the changes in this new bill, the bill is still a very serious mistake.

The immunity provision is a key reason for that. It is a key reason for my opposition to the legislation and for that of so many of my colleagues and, frankly, so many Americans. No one should be fooled about the effect of this bill. Under its terms the companies that allegedly participated in the illegal wiretapping program will walk away from these lawsuits with immunity. They will get immunity. There is simply no question about it. Anyone who says this bill preserves a meaningful role for the courts to play in deciding these cases is just wrong.

I am a little concerned that the focus on immunity has diverted attention away from the other very important issues at stake in this legislation. In the long run, I don't believe this bill will be actually remembered as the immunity bill. I think this bill is going to be remembered as the legislation in which Congress granted the executive branch the power to sweep up all of our international communications with very few controls or oversight.

Here I am talking about title I of the bill, the title that makes substantive changes to the FISA statute. I would like to explain why I am so concerned about the new surveillance powers granted in this part of the bill, and why the modest improvements made to this part of the bill don't even come close to being sufficient.

This bill has been sold to us as necessary to ensure that the Government can collect communications between persons overseas without a warrant and to ensure that the Government can collect the communications of terrorists, including their communications with people in the United States. No one disagrees that the Government should have this authority. But the bill goes much further, authorizing widespread surveillance involving innocent Americans at home and abroad.

First, the FISA Amendments Act, like the Protect America Act, will authorize the Government to collect all communications between the United States and the rest of the world.

That could mean millions upon millions of communications between innocent Americans and their friends, families, or business associates overseas could legally be collected. Parents calling their kids studying abroad, e-mails to friends '' serving in Iraq—all of these communications could be collected, with absolutely no suspicion of any wrongdoing, under this legislation. In fact, the DNI even testified that this type of ''bulk collection'' would be ''desirable.''

The bill's supporters like to say that the Government needs additional powers to target terrorists overseas. But under this bill, the Government is not limited to targeting foreigners outside the United States who are terrorists, or who are suspected of some wrongdoing, or who are members or agents of some foreign government or organization. In fact, the Government does not even need a specific purpose for wiretapping anyone overseas. All it needs to have is a general ''foreign intelligence'' purpose, which is a standard so broad that it basically covers all international communications.

That is not just my opinion. The DNI has testified that, under the PAA, and presumably this bill, the Government could legally collect all communications between the United States and overseas. Let me repeat that. Under this bill, the Government can legally collect all communications—every last one—between Americans here at home at home and the rest of the world.

I should note that one of the few bright spots in this bill is the inclusion of a provision from the Senate bill to prohibit the intentional targeting of an American overseas without a warrant. That is an important new protection. But that amendment does not prevent the indiscriminate vacuuming up of all international communications, which would allow the Government to collect the communications of Americans overseas, including with friends and family back home, without a warrant.

I tried to address this issue of ''bulk collection'' several times, working in the Intelligence Committee, the Judiciary Committee, and ultimately on the Senate floor in February, when I offered an amendment that would have required that there be some foreign intelligence purpose for the collection of communications to or from particular targets. The vast majority of Democrats supported this effort, but, unfortunately, it was defeated. So the bill today we are considering does not address this serious problem.

Second, like the earlier Senate version, this bill fails to effectively prohibit the practice of reverse targeting and this is; namely, wiretapping a person overseas when what the Government is really interested in is listening to an American here at home with whom the foreigner is communicating. The bill does have a provision that purports to address this issue. The bill prohibits intentionally targeting a person outside the United States without an individualized court order if ''the purpose'' is to target someone reasonably believed to be in the United States. But this language would permit intentional and possibly unconstitutional warrantless surveillance of an American so long as the Government has any interest in the person overseas with whom the American is communicating. And, if there was any doubt, the DNI has publicly said that the Senate bill—which contained identical language as the current bill—merely ''codifies'' the administration's position, which is that the Government can wiretap a person overseas indefinitely without a warrant, no matter how interested it may really be in the American with whom that person overseas is communicating.

Supporters of this bill also will argue that it requires the executive branch to establish guidelines for implementing this new reverse targeting requirement. But the guidelines are not subject to any judicial review. And requiring guidelines to implement an ineffective limitation is not a particularly comforting safeguard.

When the Senate considered the FISA bill earlier this year, I offered an amendment—one that had actually been approved by the Senate Judiciary Committee—to make this prohibition on reverse targeting meaningful. My amendment, which again had the support of the vast majority of the Democratic caucus and was included in the bill passed by the House in March,

would have required the Government to obtain a court order whenever a significant purpose of the surveillance is actually to acquire the communications of an American in the United States. This would have done a far better job of protecting the privacy of the international communications of innocent Americans. Unfortunately, it is not in this bill.

Third, the bill before us imposes no meaningful consequences if the Government initiates surveillance using procedures that have not been approved by the FISA Court, and the FISA Court later finds that those procedures were unlawful. Say, for example, that the FISA Court determines that the procedures were not even reasonably designed to wiretap foreigners rather than Americans. Under the bill, all of that illegally obtained information on Americans can be retained and used anyway. Once again, there are no consequences for illegal behavior.

Now, unlike the Senate bill, this new bill does generally provide for FISA Court review of surveillance procedures before surveillance begins. But it also says that if the Attorney General and the DNI certify that they don't have time to get a court order and that intelligence important to national security may be lost or not timely acquired, then they can go forward without this judicial approval. This is a far cry from allowing an exception to FISA Court review in a true emergency because arguably all intelligence is important to national security and any delay at all might cause some intelligence to be lost. So I am really concerned that this so-called exigency exception could very well swallow the rule and undermine any presumption of prior judicial approval.

But whether the exception is applied broadly or narrowly, if the Government invokes it and ultimately engages in illegal surveillance, the court should be given at least some flexibility after the fact to determine whether the government should be allowed to keep the results of illegal surveillance if it involves Americans. That is what another one of my amendments on the Senate floor would have done, an amendment that actually garnered 40 votes. Yet this issue goes completely unaddressed in the so-called compromise.

Fourth, this bill doesn't protect the privacy of Americans whose communications will be collected in vast new quantities. The administration's mantra has been: Don't worry, we have minimization procedures. Minimization procedures are nothing more than unchecked executive branch decisions about what information on Americans constitutes ''foreign intelligence.'' As recently declassified documents have again confirmed, the ability of Government officials to find out the identity of Americans and use that information is extremely broad. Moreover, even if the administration were correct that minimization procedures have worked in the past, they are certainly inadequate as a check against the vast amounts of Americans' private information that could be collected under this bill. That is why on the Senate floor joined with my colleagues, Senator WEBB and Senator TESTER, to offer an amendment to provide real protections for the privacy of Americans, j while also giving the Government the flexibility it needs to wiretap terrorists overseas. But this bill, like the Senate bill, relies solely on these inadequate minimization procedures.

The broad surveillance powers involving international communications that are contained in this legislation are particularly troubling because we live in a world in which international communications are increasingly commonplace. Thirty years ago it was very expensive, and not very common, for most Americans to make an overseas call. Now, particularly with e-mail, such communications happen all the time. Millions of ordinary, and innocent, Americans communicate with people overseas for entirely legitimate personal and business reasons. Parents or children call family members overseas. Students e-mail friends they have met while studying abroad. Business people communicate with colleagues or clients overseas. Technological advancements combined with the ever more interconnected world economy have led to an explosion of international contacts.

Supporters of the bill like to say that we just have to bring FISA up to date with new technology. But changes in technology should also cause us to take a close look at the need for greater protections of the privacy of our citizens. If we are going to give the Government broad new powers that will lead to the collection of much more information on innocent Americans, we have a duty to protect their privacy as much as we possibly can. And we can do that without sacrificing our ability to collect information that will help us protect our national security. This supposed compromise, unfortunately, fails that test.

I don't mean to suggest that this bill does not contain some improvements over the bill that the Senate passed early this year. Clearly it does, and I appreciate that. Certainly, it is a good thing that this bill includes language making clear, once and for all, that Congress considers FISA and the criminal wiretap laws to be the exclusive means by which electronic surveillance can be conducted in this country—a provision that Senator FEINSTEIN fought so hard for. And it is a good thing that Congress is directing the relevant inspectors general to do a comprehensive report on the President's illegal wiretapping program—a report whose contents I hope will be made public to the greatest degree possible. And it is a good thing that the bill no longer redefines the critical FISA term ''electronic surveillance,'' which could have led to a lot of confusion and unintended consequences.

All of those provisions are positive developments, and I am glad that the ultimate product seemingly destined to become law contains these improvements.

But I just can't pretend somehow that these improvements are enough. They are nowhere close. When I offered my amendments on the Senate floor in February, the vast majority of the Democratic caucus supported me. While I did not have the votes to pass those amendments, I am confident that more and more Members of Congress will agree that changes to this legislation need to be made. If we can't make them this year, then Congress must return to this issue—and it must do so as soon as the new President takes office. These issues are far too important to wait until the sunset date, especially now that it is set in this bill for 2012, another presidential election year.

But let me now turn to the grant of retroactive immunity that is contained in this bill because on that issue there is no question that any differences between this bill and the Senate bill are only cosmetic. Make no mistake: This bill will result in immunity.

Under the terms of this bill, a Federal district court would evaluate whether there is substantial evidence that a company received ''a written request or directive . . . from the Attorney General or the head of an element of the intelligence community . . . indicating that the activity was authorized by the President and determined to be lawful.''

But we already know from Senate Select Committee on Intelligence's committee report last fall that the companies received exactly these materials. That is already public information. So under the exact terms of this proposal, the court's evaluation would essentially be predetermined.

Regardless of how much information the court is permitted to review, what standard of review is employed, how open the proceedings are, and what role the plaintiffs are permitted to play, the court will essentially be required to grant immunity under this bill.

Now, proponents will argue that the plaintiffs in the lawsuits against the companies can participate in briefing to the court. This is true. But they are allowed to participate only to the extent it does not necessitate the disclosure of classified information. The administration has restricted information about this illegal program so much that, again, more than 70 Members of this Chamber alone don't even have access to the basic facts about what happened. So let's not pretend that the plaintiffs will be able to participate in any meaningful way. And even if they could participate fully, as I said before, immunity is a foregone conclusion under the bill.

This result is extremely disappointing on many levels, perhaps most of all because granting retroactive immunity is unnecessary and unjustified. Doing this will profoundly

undermine the rule of law in this country.

For starters, current law already provides immunity from lawsuits for companies that cooperate with the Government's request for assistance, as long as they receive either a court order or a certification from the Attorney General that no court order is needed and the request meets all statutory requirements. But if requests are not properly documented, FISA instructs the telephone companies to refuse the Government's request, and subjects them to liability if they instead still decide to cooperate. Now, there is a reason for this. This framework, which has been in place for 30 years, protects companies that act at the request of the Government while also protecting the privacy of Americans' communications.

Some supporters of retroactively expanding this already existing immunity provision argue that the telephone companies should not be penalized if they relied on a high-level Government assurance that the requested assistance was lawful. But as superficially appealing as that argument may sound, it completely ignores the history of the FISA law.

Telephone companies have a long history of receiving requests for assistance from the Government. That is because telephone companies have access to a wealth of private information about Americans—information that can be a very useful tool for law enforcement. But that very same access to private communications means that telephone companies are in a unique position of responsibility and public trust.

And yet, before FISA, there were basically no rules at all to help these phone companies resolve the tension between the Government's requests for assistance in foreign intelligence investigations and the companies' responsibilities to their customers.

So this legal vacuum resulted in serious governmental abuse and overreaching. The abuses that took place are well documented and quite shocking. With the willing cooperation of the telephone companies, the FBI conducted surveillance of peaceful antiwar protesters, journalists, steel company executives, and even Martin Luther King, Jr.

So Congress decided to take action. Based on the history of, and potential for, Government abuses, Congress decided that it was not appropriate—not appropriate—for telephone companies to simply assume that any Government request for assistance to conduct electronic surveillance was legal. Let me repeat that: A primary purpose of FISA was to make clear, once and for all, that the telephone companies should not blindly cooperate with Government requests for assistance.

At the same time, however, Congress did not want to saddle telephone companies with the responsibility of determining whether the Government's request for assistance was a lawful one. That approach would leave the companies in a permanent state of legal uncertainty about their obligations.

So Congress devised a system that would take the guesswork out of it completely. Under that system, which was in place in 2001, and is still in place today, the companies' legal obligations and liability depend entirely on whether the Government has presented the company with a court order or a certification stating that certain basic requirements have been met. If the proper documentation is submitted, the company must cooperate with the request and will be immune from liability. If the proper documentation has not been submitted, the company must refuse the Government's request, or be subject to possible liability in the courts.

The telephone companies and the Government have been operating under this simple framework for 30 years. The companies have experienced, highly trained, and highly compensated lawyers who know this law inside and out.

In view of this history, it is inconceivable that any telephone companies that allegedly cooperated with the administration's warrantless wiretapping program did not know what their obligations were. It is just as implausible that those companies believed they were entitled to simply assume the lawfulness of a Government request for assistance. This whole effort to obtain retroactive immunity is based on an assumption that doesn't hold water.

That brings me to another issue. I have been discussing why retroactive immunity is unnecessary and unjustified, but it goes beyond that. Granting companies that allegedly cooperated with an illegal program this new form of automatic, retroactive immunity undermines the law that has been on the books for decades—a law that was designed to prevent exactly the type of actions that allegedly occurred here.

Remember, telephone companies already have absolute immunity if they complied with the applicable law. They have an affirmative defense if they believed in good faith that they were complying with that law. So the retroactive immunity provision we are debating here is necessary only if we want to extend immunity to companies that did *not* comply with the applicable law and did not even have a good faith belief that they were complying with it. So much for the rule of law.

Even worse, granting retroactive immunity under these circumstances will undermine any new laws that we pass regarding Government surveillance. If we want companies to follow the law in the future, it sends a terrible message, and sets a terrible precedent, to give them a ''get out of jail free'' card for allegedly ignoring the law in the past.

I find it particularly troubling when some of my colleagues argue that we should grant immunity in order to encourage the telephone companies to cooperate with Government in the future. They want Americans to think that not granting immunity will damage our national security. But if you take a close look at the argument, it does not hold up. The telephone companies are already legally obligated to cooperate with a court order, and as I have mentioned, they already have absolute immunity for cooperating with requests that are properly certified. So the only thing we would be encouraging by granting immunity here is cooperation with requests that violate the law. That is exactly the kind of cooperation that FISA was supposed to prevent.

Let's remember why. These companies have access to our most private conversations, and Americans depend on them to respect and defend the privacy of these communications unless there is clear legal authority for sharing them. They depend on us to make sure the companies are held accountable for betrayals of that public trust. Instead, this immunity provision would invite the telephone companies to betray that trust by encouraging cooperation with illegal Government programs.

But this immunity provision does not just allow telephone companies off the hook for breaking the law. It also will make it that much harder to get to the core issue that I have been raising since December 2005, which is that the President ran an illegal program and should be held accountable. When these lawsuits are dismissed, we will be that much further away from an independent judicial review of this program.

Since 9/11, I have heard it said many times that what separates us from our enemies is respect for the rule of law. Unfortunately, the rule of law has taken it on the chin from this administration. Over and over, the President and his advisers have claimed the right to ignore the will of Congress and the laws on the books if and when they see fit. Now they are claiming the same right for any entity that assists them in that effort, no matter how unreasonable that assistance might have been.

On top of all this, we are considering granting immunity when more than 70 members of the Senate still—still—have not been briefed on the President's wiretapping program. The majority of this body still does not even know what we are being asked to grant immunity for.

In sum, I cannot support this legislation. I appreciate that changes were made to the Senate bill, but they are not enough. Nowhere near enough.

We have other alternatives. We have options. We do not have to pass this law in the midst of a presidential election year, while George Bush remains President, in the worst possible political climate for constructive legislating in this area. If the concern is that orders issued under the PAA could expire as early as August, we could extend the PAA for another 6 months, 9 months, even a year. We could put a 1-year sunset on this bill, rather than

having it sunset in the next Presidential election year when partisan politics will once again be at their worst. Or we could extend the effect of any current PAA orders for 6 months or a year. All of these options would address any immediate national security concerns.

What we do not have to do and what we should not do is pass a law that will immunize illegal behavior and fundamentally alter our surveillance laws for years to come.

I have spent a great deal of time over the past year—in the Senate Intelligence Committee, in the Senate Judiciary Committee, and on the Senate floor—discussing my concerns, offering amendments, and debating the possible effects of the fine print of various bills. But this is not simply about fine print. In the end, my opposition to this bill comes down to this: This bill is a tragic retreat from the principles that have governed Government conduct in this sensitive area for 30 years. It needlessly sacrifices the protection of the privacy of innocent Americans, and it is an abdication of this body's duty to stand up for the rule of law. I will vote no.

Mr. President, I yield the floor, and 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. REED. 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. REED. Mr. President, I ask unanimous consent to speak as in morning business.

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

The Senator from Rhode Island is recognized.

Mr. REED. Mr. President, we are at a critical moment. According to the Mortgage Bankers, the rate of foreclosures and the percentage of loans in the process of foreclosure are at the highest recorded level since 1979.

The delinquency rate for all mortgage loans on one- to four-unit residential properties stood at 6.35 percent of all loans outstanding at the end of the first quarter of 2008. This is an increase of 151 basis points from 1 year ago—a 1.5-percent increase—which is usually significant because it translates into thousands and thousands of Americans who are facing foreclosure.

The percentage of loans in the foreclosure process was 2.47 percent at the end of the first quarter, more than double what it was a year prior.

In my own State of Rhode Island, 5.65 percent of all loans are past due, and 2.75 percent are in foreclosure.

That is a staggering statistic. Rhode Island has the unfortunate distinction of having the highest foreclosure rate in New England and is fourth in the Nation for subprime foreclosures.

For many Rhode Islanders—in fact, the majority—their home is their wealth, their nest egg. Unfortunately, with such a high foreclosure rate, many Rhode Islanders are seeing their wealth erode as home prices fall. Thousands more are in default because they are no longer able to refinance or sell their homes since their mortgages are now worth more than the appraised value of their homes.

This week, the latest Case-Schiller home price index was released. Home prices in 20 U.S. metropolitan areas in April fell by 15.3 percent from a year earlier, signaling that the housing recession is not over. In fact, it continues unabated.

More foreclosures will further exacerbate the overall decline in property values and have a dramatic and drastic effect on entire communities. It is clear that this vicious cycle in the mortgage and housing markets is negatively impacting the entire economy.

In addition, as a result of the credit crunch in the mortgage markets, Fannie Mae and Freddie Mac are now the largest player in the secondary housing market. Combined, they are purchasing and securitizing almost 80 percent of the mortgage market right now and almost single-handedly are keeping mortgage credit flowing throughout the country.

Fannie Mae and Freddie Mac are at a critical juncture, and we need to make sure they are well capitalized and overseen by a strong and independent regulator with more bank-like regulatory authorities.

Finally, we do not just have a credit crunch and a mortgage meltdown, we also have a continuing and persistent affordable housing crisis in this country. The irony is, we had an affordable housing crisis when prices were going up because people were being squeezed out of rental properties. Rents were going up. People were being squeezed because there was a real demand for upscale housing and not the same kind of demand in the private market for affordable housing.

As the housing market declines, people are also squeezed. People lost their homes and are moving into apartments. The activity to build and develop affordable housing has not picked up at all. So we have the situation where we also have to deal with affordable rental housing in particular. In the wake of the foreclosure crisis, all of these factors are compounding the plight of Americans across the board. Homeowners are losing their homes, low-income Americans are struggling to find properties to rent, and homeowners have seen the value of their housing investment—which represented their plans for the future and the future of their children—all being radically rewritten as we speak because of a decline in the price of houses. We have seen for the first time a reversal in what had been a positive trend in home ownership. That is now declining.

So I think we are working hard to try to respond to all these issues. How do we inhibit, prevent, as much as we can, this drumbeat of foreclosures? How do we provide support for families who are looking for affordable housing? How do we do it in a conscientious way and also strengthen the regulatory structure that governs Fannie Mae and Freddie Mac? I think we have achieved that in this legislation, and now the time is to move forward. That is why I am encouraging all of my colleagues to support the Housing and Economic Recovery Act of 2008.

This bill includes the Federal Housing Finance Regulatory Reform Act, which will allow us to create a world-class regulator for Fannie Mae and Freddie Mac and the Federal Home Loan Banks, the housing government-sponsored enterprises. This regulator will have broad, new authorities to ensure the safe and sound operations of all these institutions. These powers will include establishing capital standards, setting prudential management standards, enforcing orders through cease-and-desist authority, civil monetary penalties and also the authority to remove officers and directors, restricting asset growth and capital distribution for those institutions which are undercapitalized. It can place a regulated entity into receivership, and it can review and approve new product offers. All of these are the powers which we have extended historically to bank regulators, and now these powers are being extended to the regulator of three of the most prominent financial institutions in the country, although their focus is on housing exclusively, or generally.

This legislation expands the number of families Freddie Mac and Fannie Mae can serve by raising the loan limits in high-cost areas to 150 percent of the conforming loan limit. It also significantly enhances the housing component of the GSEs' mission.

It includes provisions I authored that will dramatically expand Fannie Mae's and Freddie Mac's affordable housing mission by creating a new housing trust fund and capital magnet fund, financed by annual contributions from the enterprises, which will be used for the construction and rehabilitation of affordable rental housing. We expect these programs to eventually provide between $500 million to $1 billion per year for the development of housing for low-income families. These affordable housing contributions are obtained by requiring Fannie Mae and Freddie Mac to set aside less than half a cent on each dollar of unpaid principal balance of the enterprises' total new business purchases. Eventually, 75 percent of the funds collected will be used for the affordable housing trust fund and 25 percent will be allocated for the payment of Government bonds to keep the bill deficit neutral.

I was very pleased to have worked out a compromise with all my colleagues, particularly Senators DODD and SHELBY, that would allow the HOPE for Homeowners Program—the

program Senator DODD has taken the lead in crafting which will resolve or attempt to resolve some of these foreclosure difficulties—to be a mandatory program that is deficit neutral and would not require any payments from the Federal taxpayers because it would use the proceeds from the Federal housing fund in the first 2 years to pay for this foreclosure program. I think this program is a great way to accomplish many of the objectives we have. First, we do want to help people facing foreclosure, but we also do not want to necessarily engage taxpayer funds in that process. This arrangement accomplishes those two objectives.

As many of my colleagues know, I introduced a bill in November to improve the mission of the GSEs that would, in fact, allocate all the money to affordable housing. The bill before us would help this affordable housing mission, but it would also allow, as I have said, for the first 2 years, to allocate some of the resources to Senator DODD's proposal to prevent and assist in the foreclosure process.

Once we have the foreclosure program up and running, then, after 2 years, the resources will be devoted to affordable housing, with 65 percent being used to create a permanent housing trust fund. The housing trust fund will be managed by the Secretary of Housing and Urban Development, and it would distribute these funds to States via a formula. At least 75 percent of the funds distributed to the States must be targeted to extremely low-income families.

Thirty-five percent of the affordable housing funds will be allocated to a capital magnet fund and will be used by the Secretary of the Treasury to run a competitive grant program to attract private capital for and increase investment in affordable housing. Applicants for funding will need to show they can leverage the funding by at least 10 to 1. We believe this will result in the creation of many more units of affordable housing than could be done otherwise. What we are requiring these applicants to do is to enlist private capital in a ratio of at least 10 to 1 to match the public capital and increase significantly the scope of these programs and to house many more Americans. I think this is a great way to incentivize and challenge private capital to come into the field of affordable housing and to put more Americans in decent, affordable rental housing.

The mission improvement section of the bill also strengthens Fannie Mae's and Freddie Mac's affordable housing goals. In particular, it would align their goals regarding the purchase of affordable mortgages with current Community Reinvestment Act income targeting definitions and ensure that these enterprises provide liquidity to both ownership and rental housing markets for low- and very low-income families. We want to make sure we target these resources to those Americans particularly struggling in a very difficult economy—low- and very low-income Americans.

The legislation requires the enterprises to serve a variety of underserved markets, such as rural areas, manufactured housing, and affordable housing preservation. It improves reporting requirements for affordable housing activities, including expansion of a public-use database, and strengthens the new regulator's ability to enforce compliance with these housing goals.

All of these affordable housing provisions are premised on the fact that with Fannie and Freddie's Government benefits come many important responsibilities to the public.

As I mentioned earlier, this legislation also contains a bill authorized by Senator DODD called the HOPE for Homeowners Act. I wish to commend him for his hard work in crafting these provisions and also commend him for the judicious way he has managed this legislation.

In the last several weeks, this legislation has called for very critical judgments about procedures and timing and substance. On every one of those occasions, Senator DODD, working closely with Senator SHELBY, has made some remarkable, wise, and judicious judgments, and I commend him for that—both of them, and for their stewardship of this legislation.

Now, this legislation Senator DODD is proposing, the HOPE for Homeowners Act, would create a new temporary, voluntary program within the Federal Housing Administration to back FHA-insured mortgages to distressed borrowers. The program is vitally important and could not come at a more important time.

Two weeks ago, the OCC—the Office of the Comptroller of the Currency—put out a report documenting the scope of the failure of the Bush administration's efforts to stem the mortgage crisis. The administration has been relying on a voluntary industry effort called HOPE Now. HOPE Now has been reporting that it has produced in excess of 1 million loan modifications through this program. They have had events to tout it in the public and the press. They always mention this number.

The credibility of the HOPE Now numbers has been under attack for a while, primarily because they are self-reported numbers and because HOPE Now includes in its numbers ''payment plans,'' which are not loan modifications but only delay troubled home borrowers. Apparently, the regulators themselves have begun to feel a little uncomfortable, and the OCC decided to do its own report with its own numbers. They reported that voluntary mortgage industry efforts have resulted in only 52,000 loan modifications out of 3 million seriously delinquent loans.

In addition to the 3 million seriously delinquent loans—loans over 60 days or in bankruptcy or foreclosure—there are also 1.5 million foreclosures in process, and new foreclosures initiated during the same period total almost 300,000. In effect, foreclosures are running six times ahead of loan-modification efforts. Looking at it another way, loan modifications are less than 2 percent of seriously delinquent loans and only about 3 percent of foreclosures.

It is clear that the administration's argument that no new action is needed has been proven wrong. The OCC data also clearly demonstrates that helping mitigate the effects of this mortgage mess cannot be left completely up to the mortgage industry and voluntary efforts. ''Fuzzy math'' and a lack of transparency are what got us into this mess. It should not be used to try to cover up the fact that there is still a major problem.

That is why Senator DODD's HOPE for Homeowners Program is so important. It is going to enable approximately 400,000 homeowners to refinance into 30-year fixed mortgage products with FHA mortgage insurance. Many of these homeowners have no other financing option since their homes are now worth less than their mortgage. They are ''underwater.''

Any lender who participates in the HOPE Program Senator DODD is advancing will have to write down the value of the mortgage to 90 percent of the current appraised value of the home. They will write off the loss, and then the new loan for the homeowner will have to be for 30 years at a fixed rate and with FHA mortgage insurance. In exchange for getting a new loan with built-in equity, homeowners will have to share future appreciation equally with the FHA.

The intent of the legislation is to set a floor on lender losses while at the same time putting families into 30-year fixed rate mortgages that will allow them to keep their homes. This legislation, we hope, will help stabilize the housing markets in parts of the country that need the help the most.

In addition, most of the provisions from the Foreclosure Prevention Act of 2008 that passed the Senate by a vote of 88 to 8 on April 10 are included in this legislation. This section of the bill contains the Banking Committee's legislation to modernize, streamline, and expand the reach of the FHA mortgage insurance program.

The FHA modernization section includes provisions I authored that would expand access to home ownership counseling, provide for technology and staffing improvements at FHA, and update the FHA Home Equity Conversion Mortgage—HECM—Program, allowing seniors to safely tap into the equity of their home for other necessary expenses.

The FHA loan limit is increased from 95 percent to 110 percent of area median home price, with a cap at 150 percent of the GSE limit in high-cost areas, which currently will be $625,000. This should allow families in older areas of the country to access home

ownership through FHA. It also requires a downpayment of at least 3.5 percent for any FHA loan.

In addition, the Foreclosure Prevention Act section of the bill provides $3.92 billion in funding to communities hardest hit by foreclosure and delinquencies to purchase foreclosed homes at a discount and rehabilitate or redevelop the homes to stabilize neighborhoods and stem the significant losses in house values of neighboring homes. It also contains $150 million in additional funding for housing counseling.

It contains some important provisions to help our returning soldiers avoid foreclosure by lengthening the time a lender must wait before starting the foreclosure process and providing the veterans—soldiers, sailors, marines, airmen of the current conflict—with 1 year of relief from increases in mortgage interest rates. In addition, the Department of Defense is required to establish a counseling program to ensure these veterans can access assistance if facing financial difficulties. The legislation also increases the VA loan guarantee amount, so that veterans have additional home ownership opportunity.

I am also pleased that the bill contains a provision I authored in my bill, S. 2153, to amend the Truth in Lending Act to improve home loan disclosures. This provision will ensure that consumers are provided with timely and meaningful disclosures in connection with not just home purchases but also for loans that refinance a home or provide a home equity line of credit. The bill requires that mortgage disclosures be provided within 3 days of application and no later than 7 days prior to closing. This should allow borrowers to shop for another mortgage if they are not satisfied with the terms. If the terms of the loan change, the consumer must be notified 3 days before closing of the changed terms.

If consumers apply for adjustable rate or variable rate payment loans, there will now be an explicit warning on the 1-page Truth in Lending Act form that the payments will change depending on the interest rate and an estimate of how those payments will change under the terms of the contract based on the current interest rate. The bill also provides a new disclosure that informs borrowers of the maximum monthly payments possible under their loan. The bill provides the right to waive the early disclosure requirements if the consumer has a bona fide financial emergency that requires they close the loan quickly and increases the range of statutory damages for TILA violations from the current $200 to $2,000 to a range of $400 to $4,000.

Finally, it requires lenders to include a statement that the consumer is not obligated on the mortgage loan just because they received the disclosures. This will give consumers the opportunity to truly shop around for the best mortgage terms for the first time ever. They will be able to compare the payments and costs associated with a certain loan product and decide not to sign on the dotted line if they do not like the basic terms of the loan.

I believe that giving consumers the information they need regarding the maximum payment is absolutely critical. Borrowers need to better understand the full financial impact of entering into a particular loan early in the process and before they actually consummate the loan.

There are many borrowers today who signed up for a loan with teaser rates with a monthly payment they could well afford and then were shocked 18 months later to get the adjusted rates that were staggering to them and were, for many, unaffordable. Many in good faith relied on what they thought would be the initial introductory loan. I do not think they should be in that position. I think all the details, the maximum loan amount under the current rate should be available upfront, not hidden in a pile, literally a foot high, of closing documents.

They also have to have a chance to back out of the loan, if the terms are not acceptable to them, before closing the loan at the conference room table.

I am pleased my Republican colleagues have agreed with the need to improve mortgage disclosures also.

Finally, this legislation includes some important tax provisions that should enhance and strengthen the low-income housing tax credit program and the mortgage revenue bond program. It also has a refundable first-time home buyer credit of up to $8,000 to help reduce the stock of existing unoccupied housing and a nonitemizer tax deduction for State and local property taxes from Federal income tax.

It is my hope this legislation will help more families to refinance out of bad loans, help stabilize the housing market, and improve the laws and regulations so this type of foreclosure crisis never happens again.

As a member of the Banking Committee, I wish to particularly thank Chairman DODD and Senator SHELBY for including a number of bills and initiatives that I have been working on in the Housing and Economic Recovery Act that is before us today, and I hope we are going to be able to pass this important legislation in very short order.

The American people need a lot more than the current HOPE Now program, they need help now. I encourage all my colleagues, we should move forward deliberately—today, I hope—on this important legislation and send it to our colleagues in the House.

I know Chairman FRANK and his colleagues have done a remarkable job on their side to pass legislation that is very close to ours. Together, we should be able to send something to the President that he will, I hope, sign and will send a message to the American people that hope is not just a fiction of rhetoric, but it is a reality—and not just hope, but help is on the way.

I yield the floor and suggest the absence of a quorum.

The PRESIDING OFFICER. The clerk will call the roll.

The legislative clerk proceeded to call the roll.

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

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

Mr. LEAHY. That was going to be my first unanimous consent request. My second one would be I ask consent that I be recognized following the remarks of the distinguished Senator from Idaho.

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

The Senator from Idaho is recognized.

Mr. CRAPO. Mr. President, I ask unanimous consent to speak for 10 minutes as in morning business.

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

COUNTY PAYMENTS ACT

Mr. CRAPO. Mr. President, I rise to discuss the increasingly dire need to reauthorize the Secure Rural Schools and Community Self-Determination Act of 2000. It is commonly called the County Payments Act. We also need to fully fund the payment in lieu of taxes provisions, otherwise commonly called PILT funding.

One hundred years ago, legislation was enacted to provide for the return of a percentage of the U.S. Forest Service gross receipts to the States to assist counties that are home to our national forests with school and road services. The reason for this legislation was that these States, where there are very high percentages of Federal ownership of property, have a much smaller property tax base for their communities. Particularly, many of these rural communities exist in counties where most of the county—in some counties in Idaho over 90 percent of the county—is owned by the Federal Government. They have virtually no property base. Yet they have all the other issues that come with the land base to deal with in their counties—schools, roads, law enforcement, and the like. It was recognized that since the Federal Government was immune from paying property taxes, the Federal Government—which was the beneficiary from these counties and which had such significant land holdings in these counties—should provide some kind of compensation to the counties as an alternative to property taxes, which they would pay if they were not the Federal Government and exempt from paying those taxes. That is where you get the payment in lieu of taxes, or PILT payment. The Secure Rural Schools and County Self-Determination Act was something that followed up on the PILT legislation. Without these funds, many rural communities that neighbor national forests would be unable to fully meet school and road needs of local communities. In recent years, however, timber receipts have eroded

to the point where the Federal obligation to local rural communities is not met through these receipts alone.

To compensate for the shortfall and to prevent the loss of essential county schools and roads infrastructure, Congress enacted the Secure Rural Schools and Community Self-Determination Act. This law has provided assistance to communities whose regular Forest Service and Bureau of Land Management receipt-sharing payments have declined significantly. Unfortunately, it expired at the end of 2006. While funding to continue the program for 2007 was thankfully included in last year's emergency supplemental, this funding has run out.

I stood on the floor of this Senate almost 5 months ago asking my colleagues to make this overdue extension and funding a top priority or Congress. However, this extension has still not been achieved, and counties and school districts that were facing job losses 5 months ago are in an increasingly more difficult situation. People are losing their jobs and families across the Nation are being impacted. The education of children across this Nation is being affected. This is unacceptable.

In April, I joined a bipartisan group of Senators who sent a letter to the Senate Appropriations Committee seeking the inclusion of an extension and funding for the Secure Rural Schools and Self-Determination Act of 2000 in the Fiscal Year 2008 Emergency Supplemental Appropriations Act. The Emergency Supplemental that was passed by the Senate last month contained $400 million to continue county payments for another year. This funding would ensure the continued assistance for rural communities struggling to provide necessary services in areas with large amounts Federal land. This bridge funding is essential to ensure the continuation of needed school services in rural communities throughout the country while work continues on a longer term extension. I understand that unfortunately this funding was stripped out of the supplemental in negotiations between the House and the administration.

I remind this body that a multiple year extension and funding for county payments and PILT has the overwhelming support of a bipartisan majority of the Senate. In fact, 74 Senators voted in favor of an amendment to provide a multi-year extension and funding in last year's emergency supplemental appropriations bill. However, as previously mentioned, this extension was pared back to one-year funding in the version that came out of conference and was enacted into law. Now, there is no funding and far less time.

What does a failure to extend the Secure Rural Schools and Community Self-Determination Act mean? It means the loss of more than 20,000 county and school employee jobs across the Nation. It means nearly 7,000 teachers and educational staff are estimated to lose their jobs. More than 100 teaching positions in Idaho alone will likely be affected. It means that 600 counties and more than 4,000 school districts in 42 States will not have the funds to fully provide needed services. It means incredible uncertainty to rural communities, counties, and families across the Nation during these difficult economic times. It means more than 8,000 road miles will not be maintained in Idaho alone. It means children in rural communities will have decreased access to quality education.

To help visualize the impact on rural communities of a failure to extend the program, I want to share some Idaho examples that were shared with me from my constituents: Shoshone County, ID, with a population of 15,000, expects 15 school instructional staff and as much as 55 percent of the county's road department employees to be affected. In Boise County, with a population of close to 7,000, the Road and Bridge Department will have to lay off the majority of its employees—one half to three-fourths of the employees—within 1 year and only perform those activities that are necessary to public safety. Clearwater County, with a population of approximately 8,000, faces the loss of more than $500,000, which will greatly impact public safety because of lost services for road maintenance and law enforcement. I am told that Boundary County, with a population of 11,000, will not be able to blacktop roads and will have to let them deteriorate to gravel-based roads. We simply cannot allow this to occur in any State in this Nation.

Congress needs to demonstrate it is serious about getting this done. Families in rural communities across this Nation deserve no less. It is shameful that Congress may be recessing once again and Members will be heading home to their home States without passing an extension. The word disappointing is an understatement. This puts services in rural communities across this Nation in jeopardy, and it is simply wrong. We all need to work together to make this more of a priority. Over the years, this has been a bipartisan effort, and that simply must continue. This takes the commitment of all of us, including administration, House and Senate leadership to get this done.

I understand that other domestic spending has been included in the supplemental. I won't for a second diminish the need for those funds, but I must point out that county payments are vitally important and deserve to be included in the supplemental as well. I will continue to work with my colleagues to press for the inclusion of county payment funds. In December, Senators CRAIG, SMITH, MURKOWSKI, MCCASKILL, DOLE, STEVENS and BENNETT joined me in urging the Senate leadership to attach a reauthorization of county payments and PILT funding to any legislative vehicles expected to be enacted before Congress concluded work for the year.

I continue to believe, as I did then, that we must pursue every opportunity to achieve enactment and attach an extension to every moving legislative vehicle. The counties of the United States which host our Federal properties are not allowed by Federal law to impose property tax on them for the services that those properties require.

This legislation honorably and fairly has met these responsibilities over the years until the last few years when Congress has struggled so hard to find its way through to extension and funding of these important needs.

I encourage my colleagues to act quickly, to act now, and to assure that we give the necessary priority to this county funding to get us past this crisis.

I yield the floor.

The PRESIDING OFFICER. The Senator from Vermont.

Mr. LEAHY. Mr. President, we have received a request that the distinguished senior Senator from Missouri, Mr. BOND, wishes to be recognized upon the conclusion of my remarks.

I ask unanimous consent that Senator BOND be recognized upon the conclusion of my remarks.

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

FISA

Mr. LEAHY. Mr. President, we have an ongoing debate on the whole question of FISA, the Foreign Intelligence Surveillance Act. Since the beginning of this debate, I have opposed legislation that does not provide some kind of accountability for the 6 years of illegal warrantless wiretapping that was started and, in fact, approved by this administration.

The bill that has been presented to the Senate, as it stands now, absent any amendments, seems intended to result in the dismissal of ongoing cases against the telecommunication carriers that participated in the warrantless wiretapping program. It would lead to the dismissal of the cases without allowing a court ever to review whether the program itself was legal.

So the bill would have the effect of ensuring that this administration, the administration that decided to carry out the illegal wiretapping, is never called to answer for its actions, and never held accountable in a court of law. I cannot support that result.

It is now almost 7 years since the President began an effort to circumvent the law in violation of the provisions of the governing statute, the Foreign Intelligence Surveillance Act.

I have said I believe that the conduct was illegal. In running its program of warrantless surveillance, the administration relied on result-oriented legal opinions. These opinions were prepared in secret. They were shown only to a tiny group of like-minded officials. This ensured, of course, that the administration received not independent legal advice, but the legal advice that it had predetermined it wanted.

A former head of the Justice Department's Office of Legal Counsel described this program as a ''legal mess.''

And this administration wants to make sure no court ever reviews this legal mess.

The bill presented to the Senate seems designed to ensure that they are going to get their wish. The administration worked very hard to ensure that Congress could not effectively review the program or the basis for its arguments for immunity.

Since the existence of the program became known through the press, the Judiciary Committee has repeatedly tried to obtain access to information its members needed so we could evaluate the administration's legal arguments, which are squarely under the jurisdiction of our committee.

Indeed, Senator SPECTER, when he was the chairman of the Judiciary Committee, prepared subpoenas to telecommunication carriers to obtain this information. He wanted information from the telecommunications carriers because the administration would not tell us directly what it had done. But those subpoenas sought by a Republican chairman were never issued.

As Senator SPECTER himself has explained publicly, Vice President CHENEY intervened with other Republican members of the Judiciary Committee to undercut Senator SPECTER, and, of course, the Vice President then succeeded in blocking the subpoenas.

It was only just before the Intelligence and Judiciary Committees' consideration of this bill that the Judiciary Committee members finally obtained access to some of the documents we had sought. I remind you, though, that most Members of this Chamber, most Senators called upon to vote, have not seen those documents. I have seen them, and I would hope that they would be made available to every Senator.

The Senators who have seen them have drawn very different conclusions. But no matter what conclusion you reach, you ought to get access to the documents so that you can make an informed judgment.

I will not discuss the documents that are still held in secret, but I will talk about the public reports. There are public reports that at least one telecommunications carrier refused to comply with the administration's request to cooperate with the warrantless wiretapping. All Senators should have had the opportunity to know those facts so they can make informed judgments whether there were legal claims that other carriers should have raised.

It is also clear that the Bush-Cheney administration did not want the Senate to evaluate the evidence and be able to draw its own conclusions. They wanted to avoid accountability.

Indeed, the Senate Select Committee on Intelligence, with all of the work it has done on this issue, has not conducted a review of the legality of the warrantless wiretapping program.

Now, I am not here to try to get the telephone companies. According to public reports, at least one company said no, presumably because it feared that by complying it would break the law. Other phone companies, according to the public statements, apparently believed they were doing what was best for their country. I am not out to get them.

In fact, I would have supported legislation to have the Government indemnify the telecommunications carriers for any liability incurred at the behest of the Government. As I said, it is not a case of going after the phone companies; I want accountability.

I supported alternative efforts by Senator SPECTER and Senator WHITEHOUSE to substitute the Government for the defendants in these cases. In other words, take the phone companies out and substitute the Government so the cases can proceed to a determination on the merits.

These alternatives would have allowed judicial review of the legality of the administration's acts—I think it is clear that the administration's actions were illegal—then let a court determine who was responsible for those actions.

This bill does not provide that accountability. As I read the language of the bill, it is designed to have the courts dismiss the pending cases if the Attorney General simply certifies to the court that the alleged activity was the subject of a written request from the Attorney General, and that request indicated the activity was authorized by the President and determined to be lawful.

In other words, if the Attorney General said: Well, I do not care what the law says, I have determined that the President does not have to follow the law. If the Attorney General says, in effect, notwithstanding the rule of law in this country, this President is above the law, so, therefore, nothing he does is illegal. These kinds of baseless legal conclusions could form the basis for immunity under this scheme.

That is really what this bill provides. That concerns me, as it should concern everybody. We should not be dismissing Americans' claims that their fundamental rights were violated based on the mere assertion of a party in interest that what it did was lawful.

Think about it: this would be like a police officer catching someone committing a burglary and saying: I am going to arrest you for burglary. And the burglar sitting there with a bag of burglary tools, having broken in the door, saying: You cannot do that because I thought about this breaking and entering. I decided that in my case it is not illegal. And then the police officer has to say: Gee, I am sorry for the inconvenience, sir, go on your merry way.

That is what we are saying. Or actually, it is even worse than that. It is as if they actually arrested that burglar, they brought him into court, and the burglar stands up and says: Your Honor, I determined all by myself—disregarding you, Your Honor; disregarding the evidence, I determined all by myself—that even though I was involved in a burglary, I should not even be subject to the court's jurisdiction because I say that what I did was legal. Goodbye, Your Honor. Have a nice day. I am leaving.

That is what we are doing with this bill. In fact, there is not even a determination by the current Attorney General that the wireless wiretapping program was lawful, perhaps because he could not make such a determination. But all he has to do to ensure immunity is to certify that the phone company acted at the behest of the administration and that the administration indicated that the activity was determined to be lawful.

Regardless of whether or not it actually was lawful, all the Attorney General has to say is that it was determined to be lawful. We are not going to tell you when that determination was made. We are not even going to tell you whether the people who made that determination went to law school. It is lawful because the President is above the law; therefore, we are off the hook.

I believe the rule of law is important. I do not believe any one of us, the 100 of us in this body, is above the law. I have been here with six Presidents. I do not believe any one of them, Republican or Democratic Presidents, is above the law. I do not believe Congress should try to put a President above the law and seek to take away the only viable avenue for Americans to seek redress for harm to their privacy and liberty, and the only viable avenue of accountability for the administration's lawlessness.

Why should we, the United States Senate, the conscience of the Nation, why should we sit here and say: We are going to condone lawlessness, and even more importantly, we 100 people, acting on behalf of 300 million other Americans, are saying: We are never even going to let you know who committed the unlawful acts and why.

Now, I recognize this legislation also contains important surveillance authority. I support this new authority. I worked for years to craft legislation that provides that important authority along with appropriate protections for privacy and civil liberties. I have voted for dozens of changes in the FISA legislation to be able to help our intelligence agencies.

In fact, the Senate Judiciary Committee, under my leadership, reported such a bill last fall. So I commend House Majority Leader HOYER and Senator ROCKEFELLER, who negotiated this legislation, for incorporating several additional protections to bring it closer to the bill we voted out of the Judiciary Committee.

I note, in particular, the requirement of an inspector general review of this administration's warrantless wiretapping program. It is a provision I have advocated at every single meeting we have had, open or closed, through the course of the consideration of these matters. This review will provide for a

comprehensive examination of the relevant facts about this program.

Actually, it should prove useful to the next President. I believe we should have still more protections for privacy and civil liberties. If this bill becomes law I will work with the next administration on additional protections. Despite some improvements to the surveillance authorities the bill authorizes, improvements I support, I will not support this legislation. The administration broke the law. They violated FISA by conducting warrantless surveillance for more than 5 years, and they got caught. Now they want us to cover their actions. They want us to say: That's OK. Even though we don't know which one of you decided to break the law, we are going to let you all off the hook. The apparent purpose of title II of this bill is to ensure that they will not be held to account. That is wrong. I will, therefore, oppose cloture on the motion to proceed to the measure. If the Senate proceeds to the bill, I will then support amendments to its unaccountability provisions, including an amendment to strike the immunity provisions. But if those are not successful, I will have to vote against it.

The bottom line is this: In America, nobody should be above the law. One thing unites every single Senator. We want to keep our great and good country safe. We all want to stop terrorists. We have spent hundreds of billions of dollars to do that. We have procedures to do that. But one of the principles of this country and something we have always preached to other countries is, that in good times and bad times, we follow the law. We did this during two world wars, in the Revolutionary War and in the Civil War.

I am imploring the Senate not to turn its back on over 200 years of history of following the law and saying, in this situation, we are going to condone an administration that broke the law. I cannot vote for that. I cannot in good conscience vote for that. I cannot be true to my own oath of office and vote for that. Certainly, I would not want to tell the people of Vermont I voted for that.

I yield the floor.

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

Mr. BOND. Mr. President, I ask unanimous consent that after my remarks, the Senator from California, Mrs. FEINSTEIN, be recognized, and that she be followed by the Senator from Georgia, Mr. CHAMBLISS.

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

Mr. BOND. Mr. President, while my good friend from Vermont was on the floor, I thought he raised some good questions. I believe we have good answers for those questions. I know of his dedication and commitment to the rule of law and accountability, his very distinguished service as head of the Judiciary Committee. But there are several things I would point out.

No. 1, we have been working on this entire issue of the President's terrorist surveillance program for better than a year now. We have reviewed all of the documents. We have had all of the people who administered the program, who have given opinions on it, come in. I dispute his statement that there were 6 years of unlawful activity of the President. He said no court will be able to review the illegality; no independent officials have reviewed it.

First, it is my understanding, although I was not one of them, that the big eight at the time—that is, the Republican and Democratic leaders of the House and the Senate and the leaders of their Intelligence Committees—were briefed on this program before it started. I don't know the substance of the briefing. I would imagine that they told them the problems in the existing old FISA law would make it difficult to implement that law, given the new technology which, in fact, was the case. In any event, it went forward.

When the program was finally disclosed and briefed to the Intelligence Committee, I spent a good bit of time reviewing that. I have studied constitutional law and made constitutional law arguments before. I believe if my friends who have questions about it will check the Constitution and the appellate court's interpretation of article II, they will find that they assume the President does have power to collect foreign intelligence information as an adjunct to his responsibility to conduct foreign affairs.

There is no question that Congress cannot pass a law abrogating that constitutional right. As a matter of fact, in one of the released cases, one of the cases made public by the Foreign Intelligence Surveillance Court, or FISC, they noted that Congress could not abrogate that constitutional right. It would be unconstitutional. For those who raise the test of the steel cases, I don't necessarily accept that test, that the enactments of Congress can affect the measure of credibility and extent of the President's power. The Congress did pass the authorization for the use of military force prior to the imposition of the terrorist surveillance program. We had access to the documents. Based on review of the documents, the Senate Intelligence Committee, by a vote of 13 to 2, passed out the bill which is the essential framework that is before us.

The courts can review to see that there are certifications by the Attorney General, directives by the President, and only if they find no substantial evidence to support that, then the suits will be dismissed.

My friend from Vermont said we ought to substitute the Government for the phone company for judicial review. There is another provision in the bill he should understand. If you want to sue the Government, there is no ban in this bill on suing the Government or suing Government officials. That can go forward. That is not affected by this bill. There has been extensive discussion over the legality of it. For those who wish to have a trial on the legality of the program, there are other means still available. To penalize a phone company or other carrier which, in good faith reliance on a representation of the Attorney General and the President of the United States, carried out a program that I believe is lawful to protect American citizens, I think is totally unwarranted.

Let me describe today for my colleagues and for those who may be interested this long and difficult process which I believe has finally accomplished its goal. This week we have a chance to tell the American people that the intelligence community on which our citizens, our troops, and our allies rely to keep us safe from terrorists and other forms of evil in the world can continue to do its job. We can tell those companies that answered their Government's call for help in the aftermath of the September 11 terrorist attacks that a grateful nation stands behind them and that they will be given the civil liability protection they rightly deserve.

I strongly support voting for cloture on the motion to proceed to H.R. 6304, the FISA Amendments Act, this afternoon. I strongly encourage my colleagues not only to do the same but also to oppose any amendments offered to it. We have finally struck a deal with the House, and the House honored the deal last Friday by allowing no amendments on the House floor. I ask my colleagues to hold up our end of the bargain. While it is in every Senator's right to offer an amendment, I urge my colleagues to vote down all amendments no matter what they may be so that we may send the bill immediately to the President for signature and make sure we don't have further gaps in our intelligence system which could appear once again if we do not pass this in a timely fashion. If we send it back to the House, there is no telling when a final bill could be back here for passage.

Let me describe briefly how we got here. Approximately a year ago, Director of National Intelligence ADM Mike McConnell came to Congress and asked that we update the Foreign Intelligence Surveillance Act. Changes in technology resulted in court rulings or interpretations that made it very difficult to use electronic surveillance effectively against terrorist enemies overseas. The problem came to a head in May 2007, with a ruling that caused significant gaps in collection. Although the DNI at the time pleaded to Congress to help, the leadership of Congress did not move.

In the looming pressure of the August recess, the Republican leader, Senator MCCONNELL, and I cosponsored the Protect America Act which Congress passed the first week of August last year. The act did exactly what it

was intended to. It closed the intelligence gaps that threatened the security of our Nation and of our troops. But it was lacking in one important aspect, as we were not able to include in it the retroactive civil liability protection from ongoing frivolous lawsuits against those partners who had assisted the intelligence community in the President's program.

Following the passage of the Protect America Act, I am proud to say that Senator ROCKEFELLER and I worked on a bipartisan basis to come up with a permanent solution to modernize FISA and give those private partners the needed retroactive liability protection. We worked closely for months with the DNI, Department of Justice, and their experts from the intelligence community to ensure there would be no unintended operational consequences from any of the provisions included in our bipartisan product. In February of this year, after many hearings, briefings, and a lot of debate on the Senate floor, the Senate passed the FISA amendments by a strong bipartisan vote of 68 to 29.

The bill coming out of the Senate reflected the Intelligence Committee's conclusion that the electronic communication service providers who assisted the President's TSP acted in good faith and deserved civil liability protection from frivolous lawsuits. The Senate bill also went farther than any legislation in history in protecting the privacy interests of American citizens or U.S. persons whose communications might be acquired through targeting overseas. It also required the FISA approval to target U.S. persons overseas, if they are going to have collection initiated against them.

At the end of the day, there were many difficult compromises. Both sides gave, and we came up with a bill that was not only bipartisan but the best piece of effort we could get out of this legislative process.

Although the Senate passed the bill before the Protect America Act expired, in the House there was a clear majority. But the leadership didn't let it come up. They went on recess. In the days following the expiration, private partners refused to provide intelligence information, frankly, in light of the ongoing litigation, the tremendous threat to their business franchise, the fact that they and, particularly their shareholders, who may be retired persons depending on pensions and others, could be losing billions of dollars in the marketplace because of the size of these outrageous lawsuits seeking billions of dollars, when, in my view, there was no damage and no grounds for recovery. Fortunately, after several days' negotiation, the intelligence community was able to get the providers to resume cooperation, but the intelligence lost in that time was gone, and we will never know what we missed because the House leadership refused to bring up the Senate bill.

Some have accused me and my colleagues of saying at the time, falsely, that the sky was falling. For a few days the sky was falling until a tenuous agreement was worked out between the executive branch and the providers. But the agreement was all predicated upon ongoing work to pass a FISA modernization law in the near term. That is another reason why it is vital the Senate move immediately to consider the FISA Amendments Act. Once the House returned from the Easter recess, my good friend and fellow Missourian, majority whip ROY BLUNT, and I met with the House majority leader, STENY HOYER, asking him what he thought the House needed in order to allow the Senate bill a vote on the House floor. We and our staffs began discussions and sent proposals back and forth attempting to come together. During that time, ROY BLUNT and I conferred repeatedly with Congressmen HOEKSTRA and SMITH and, of course, vetted our proposals with the intelligence community.

Finally, after four personal meetings over 2 months—and a tremendous amount of staff work—between Majority Leader HOYER, Minority Whip BLUNT, and me—Whip BLUNT and I delivered a proposal to Mr. HOYER before Memorial Day, a deadline he had set.

This agreement was one that had been signed off on and fully discussed with Mr. HOEKSTRA, the vice chairman of the House Intelligence Committee, and LAMAR SMITH, the ranking member of the Judiciary Committee. We felt this was the best offer we could make on behalf of the Republicans in the House and Senate, and it was agreed to by the intelligence community.

The Memorial Day deadline, however, came and went, and again the House went on recess. Finally, after more interaction among our staffs, I received word 2 weeks ago that the House Democrats were ready to work out final language. So Leader HOYER and Whip BLUNT and I met for a fifth time, this time inviting my colleague, JAY ROCKEFELLER, to join us in the final negotiations. On June 12, the Democratic House leaders gave up their idea of having a commission take a look at the surveillance program, which we believe would have been political, further interfering with the work of the Intelligence Committee and perhaps community, and perhaps lead to increased leaks about the program.

They agreed on a longer sunset than in previous bills. We abandoned the idea that the FISA Court should be the one to assess compliance with the minimization procedures used in foreign targeting. With the concessions Republicans and the administration had already made, along with some minor technical fixes, I am proud to say the intelligence community was given the flexibility and tools it needs to keep us safe. We had a compromise.

Now, I offer all that as background so the record is clear. That brings us where we are today. Once we get on the bill, I will explain what is before us, and I will explain how statements from some about this legislation is nothing short of fear mongering, such as from those who are saying all Americans who talk to anyone overseas will be listened to by the Government. That is flat wrong.

Americans cannot be targeted without a court order, period. If someone overseas is targeted and talks to an American, then the American's end of the communication is what we call minimized, which means it is hidden, protected, suppressed. I will elaborate further on this. But at this time, I simply ask my colleagues to vote for cloture so we may move immediately to the bill.

I note some of my colleagues from the Senate Intelligence Committee are seeking recognition, and I appreciate the work all members of the committee have done. I see my colleague from Georgia, who has been an outstanding help, and the Senator from California, who has offered many useful ideas. This has been truly a year's long work, and we are happy to bring the final process before the Senate today.

I thank the Chair and yield the floor.

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

Mrs. FEINSTEIN. Mr. President, it is my understanding I am next in the order. I ask unanimous consent that following my presentation the Senator from Vermont be recognized on our side. I know Senator CHAMBLISS is here on the Republican side and wishes to speak.

Mr. CHAMBLISS. Mr. President, reserving the right to object, can we propose a unanimous consent request that following Senator FEINSTEIN, I be recognized to speak, and then Senator SANDERS will be next?

The ACTING PRESIDENT pro tempore. I believe that was the Senator's request.

Mrs. FEINSTEIN. That was the intent.

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

Mrs. FEINSTEIN. Thank you very much, Mr. President.

Mr. President, I begin my remarks by thanking the chairman of the Intelligence Committee, Senator ROCKEFELLER, and the vice chairman of the Intelligence Committee, Senator BOND, the House Speaker, and the House leadership for their distinguished work on this piece of legislation. This has not been easy. It is certainly not without controversy. There are some major challenges to work through.

I want to begin by putting my remarks, at least, in context.

There is no more important requirement for national security than obtaining accurate, actionable intelligence. At the same time, there have to be strong safeguards in place to ensure that the Government does not infringe on Americans' constitutional rights.

Yet if Congress does not act and pass this bill, as it was passed overwhelmingly in the House, both of these goals,

I believe, are in jeopardy. Here is why. If this bill does not pass, our Nation would likely be forced to either extend the Protect America Act or leave the Nation bare until a new bill can be written. Neither of these are good options.

As I will describe, the Protect America Act does not adequately protect Americans' constitutional rights. It was written to be a temporary measure for 6 months, and it expired on February 5.

What many people do not understand is that surveillance conducted under the Protect America Act will cease by the middle of August. It will be impossible to write a new bill, to get it past both Houses, to have it signed by the President in time to meet this deadline.

If that bill expires without this Congress passing new legislation, we will be unable to conduct electronic surveillance on a large number of foreign targets. In other words, our intelligence apparatus will be laid bare and the Nation will go into greater jeopardy. I truly believe that.

The FISA legislation of 1978 cannot accommodate this number of targets. It is simply inadequate for this new task due to changes in technology and the communications industry. That is precisely why FISA needs to be modernized.

So taking no action means we will be opening ourselves, in my view, to the possibility of major attack. This is unacceptable.

So as I see it, our choice is a clear one: We either pass this legislation or we extend the Protect America Act. For me, this legislation is much the better option.

This bill, in some respects, improves even on the base bill, the 1978 Foreign Intelligence Surveillance Act. It provides clear protections for U.S. persons both at home and abroad. It ensures that the Government cannot conduct electronic surveillance on an American anywhere in the world without a warrant. No legislation has done that up to this point.

I think the improvements in this bill over the Protect America Act and the 1978 legislation are important to understand, and I wish to list a few.

First, prior court review. This bill ensures that there will be no more warrantless surveillance. Now, why do I say this? Under the Protect America Act—which is expiring, but we are still collecting surveillance under it for now—the intelligence community was authorized to conduct electronic surveillance for a period of 4 months before submitting an application for a warrant to the FISA Court. Surveillance could actually proceed for 6 months before there was a warrant.

Under this bill, the Government must submit an application and receive a warrant from the FISA Court before surveillance begins. No more warrantless surveillance. This is, in fact, a major point.

In emergency cases, there can be a short period of collection—up to 7 days—as the application is prepared. There has been a provision for emergency cases under FISA for some 30 years now. So that is prior court review for a U.S. person anywhere in the world if content is collected.

Meaningful court review. This bill strengthens court review. Under the Protect America Act, the Government submitted to the FISA Court its determination that procedures were in place to ensure that only people outside the United States would be targeted. The court could only reject an application for a warrant if it found that determination to be ''clearly erroneous.'' This bill returns to the traditional FISA standard, empowering the court to decide whether the Government's determination is ''reasonable.'' This is a higher standard of review, so the court review under this bill is meaningful.

Next, minimization. These first two improvements ensure that the Government will only be targeting people outside the country. That is good, but it is not enough. There is always the possibility of someone outside the country talking to a U.S. person inside the country. The bill addresses this with a process known as minimization.

In 1978, Congress said that the Government could do surveillance on U.S. persons under a court warrant, but required the Government to minimize the amount of information on those Americans who get included in the intelligence reporting. In practice, this actually means that the National Security Agency only includes information about a U.S. person that is strictly necessary to convey the intelligence. Most of the time, the person's name is not included in the report. That is the minimization process.

If an American's communication is incidentally caught up in electronic surveillance while the Government is targeting someone else, minimization protects that person's private information.

Now, the Protect America Act did not provide for court review over this minimization process at all. But this bill requires the court in advance to approve the Government's minimization procedures prior to commencing with any minimization program. That is good. That is the third improvement.

Fourth, reverse targeting. There is an explicit ban on reverse targeting. Now, what is reverse targeting? That is the concern that the National Security Agency could get around the warrant requirement. If the NSA wanted to get my communications but did not want to go to the FISA Court, they might try to figure out who I am talking with and collect the content of their calls to get to me. This bill says you cannot do that. You cannot reverse target. It is prohibited. This was a concern with the Protect America Act, and it is fixed in this bill.

Those are four reasons—good reasons. Here is a fifth: U.S. person privacy outside the United States. This bill does more than Congress has ever done before to protect Americans' privacy regardless of where they are, anywhere in the world. Under this bill, the executive branch will be required to obtain a warrant any time it seeks to direct surveillance at a U.S. person anywhere in the world. So any U.S. person anywhere in the world is protected by the requirement that a warrant must be received from the Foreign Intelligence Surveillance Court before electronic surveillance can begin.

Previously, FISA only covered people inside the United States. The Protect America Act did the same thing.

Now, also under this bill, there will be reviews of surveillance authorities by the Director of National Intelligence, the Attorney General, the heads of all relevant agencies, and the inspectors general of all relevant agencies on a regular basis, and the FISA Court and the Congress will receive the results of those reviews.

So there will be regular reporting from the professionals in the arena on how this bill is being followed through on—how electronic surveillance is being carried out worldwide. The Intelligence and Judiciary Committees will receive those reports. That, too, is important.

Also, under this bill, there will be a retrospective review of the President's Terrorist Surveillance Program. That is the program that has stirred the furor. The bill requires an unclassified report on the facts of the program, including its limits, the legal justifications, and the role played by the FISA Court and any private actors involved. This will provide needed accountability.

In summary, all intelligence collection under the Terrorist Surveillance Program will be brought under court review and court orders.

Everything I have described brings this administration back under the law. There is no more Terrorist Surveillance Program. There is only court-approved, Congressionally reviewed collection.

But what is to keep this administration or any other administration from going around the law again? The answer is one word, and it is called exclusivity.

It means that the Foreign Intelligence Surveillance Act is the only, the exclusive, means for conducting electronic surveillance inside the United States for foreign intelligence purposes.

The exclusivity language in this bill is identical in substance to the amendment I offered in February, which received 57 votes in this Senate. It is section 102 of this bill.

This language reiterates what FISA said in 1978, and it goes further. Here is what this bill says:

Never again will a President be able to say that his authority—or her authority, one day, I hope—as Commander in Chief can be used to violate a law duly enacted by Congress.

Never again can an Executive say that a law passed to do one thing—such as use military force against our enemies—also overrides a ban on warrantless surveillance. The administration has said that the resolution to authorize the use of military force gave this President the right to go around FISA.

Never again can the Government go to private companies for their assistance in conducting surveillance that violates the law.

Now, this administration has a very broad view of Executive authority. Quite simply, it believes that when it comes to these matters, the President is above the law. I reject that notion in the strongest terms.

I think it is important to review the recent history with this administration to demonstrate why FISA exclusivity is so important.

At the very beginning of the Terrorist Surveillance Program, John Yoo, at the Office of Legal Counsel, wrote in a legal opinion that:

> . . . [u]nless Congress made a clear statement in the Foreign Intelligence Surveillance Act that it sought to restrict presidential authority to conduct warrantless searches in the national security area—which it has not—then the statute must be construed to avoid [such] a reading.

That was the argument. I believe it is wrong. Congress wrote FISA in 1978 precisely in the field of national security; there are other, separate laws that govern wiretapping in the criminal context. In fact, the Department of Justice has repudiated Yoo's notion.

But if the Department admitted that FISA did apply, it found another excuse not to take the Terrorist Surveillance Program to the FISA Court.

The Department of Justice developed a new, convoluted argument that Congress had authorized the President to go around FISA by passing the authorization to use military force against al-Qaida and the Taliban.

This is as flimsy as the last argument.

There is nothing in the AUMF that talks about electronic surveillance or FISA, and I know of not one Member who believed we were suspending FISA when we authorized the President to go to war.

But that is another argument we lay to rest with this bill. Here is how we do it. We say in the language in this bill that FISA is exclusive. Now, here is the major part: Only a specific statutory grant of authority in future legislation can provide authority to the Chief Executive to conduct surveillance without a FISA warrant.

So we go a step further in exclusivity. We cover what Yoo was trying to argue and what others might argue on behalf of a Chief Executive in the future, by closing the loophole and saying: You need specific statutory authority by the Congress of the United States to go outside the law and the Constitution.

The final argument the President has made is that even if FISA was intended to apply, and even if the AUMF didn't override FISA's procedures, he still had the authority as Commander in Chief to disregard the law.

Now, I have spoken on the floor before about how the President believes he is above the law and the Youngstown Sheet and Tube Company v. Sawyer case. In that case, Justice Jackson described how the President's power is at the ''lowest ebb'' when he is acting in contravention to the will of the Congress.

This bill, again, makes it clear that the will of Congress is that there will be no electronic surveillance inside the United States without a warrant, and it makes clear that any electronic surveillance that is conducted outside of FISA or outside of another express statutory authorization for surveillance is a criminal act. It is criminalized. This is the strongest statement of exclusivity in history.

The reason I am describing all this is to build a case of legislative intent in case this is ever litigated, and I suspect it may well be.

So, finally, I wish to read into the RECORD the comments on exclusivity from a June 19, 2008, letter that Attorney General Mukasey and Director of National Intelligence McConnell wrote to the Congress. The letter recognizes that the exclusivity provision in this bill ''goes beyond the exclusive means provision that was passed as part of FISA [in 1978].''

So they essentially admit we are taking exclusivity to a new high. Nevertheless, they acknowledge that the provision in this bill ''would not restrict the authority of the government to conduct necessary surveillance for intelligence and law enforcement purposes in a way that would harm national security.''

I said in February I could not support a bill without exclusivity. This is what keeps history from repeating itself and another President from going outside the law. I believe that with this language we will prevent it from ever happening again.

Now, a comment on title II of the bill, which is the telecom immunity section. This bill also creates a legal process that may—and, in fact, is likely to—result in immunity for telecommunications companies that are alleged to have provided assistance to the Government.

I have spent a great deal of time reviewing this matter. I have read the legal opinions written by the Office of Legal Counsel at the Department of Justice. I have read the written requests to telecommunications companies. I have spoken to officials inside and outside the Government, including several meetings with the companies alleged to have participated in the program.

The companies were told after 9/11 that their assistance was needed to protect against further terrorist acts. This actually happened within weeks of 9/11. I think we can all understand and remember what the situation was in the 3 weeks following 9/11.

The companies were told the surveillance program was authorized and that it was legal, and they were prevented from doing their due diligence in reviewing the Government's request. In fact, very few people in these companies—these big telecoms—are actually cleared to receive this information and discuss it. So that creates a very limited universe of people who can do their due diligence within the confines of a given telecommunications company.

For the record, let me also address what I have heard some of my colleagues say. At the beginning of the Terrorist Surveillance Program, only four Senators were briefed. The Intelligence Committee was not, other than the Chairman and Vice Chairman.

I am one who believes it is right for the public and the private sector to support the Government at a time of need. When it is a matter of national security, it is all the more important.

I think the lion's share of the fault rests with the administration, not with the companies.

It was the administration who refused to go to the FISA Court to seek warrants. They could have gone to the FISA Court to seek these warrants on a program basis, and they have done so subsequently.

It was the administration who withheld this surveillance program from the vast majority of Members of Congress, and it was the administration who developed the legal theories to explain why it could, in fact, go around the law.

So I am pleased this bill includes independent reviews of the administration's actions to be conducted by the inspectors general of the relevant departments.

All of that said, when the legislation was before the Senate in February, I stated my belief that immunity should only be provided if the defendant companies acted legally, or if they acted in good faith with a reasonable belief that their actions were legal. That is what the law calls for.

I moved an amendment to require the court to review the written requests to companies to see whether they met the terms of the law. That law requires that a specific person send a certification in writing to a telecommunications company. That certification is required to state that no court order is required for the surveillance, that all statutory requirements have been met, and that the assistance is required by the Government.

Unfortunately, my amendment was not adopted, but I continue to believe it is the appropriate standard.

Now, the pending legislation does not assess whether the request made by the Government was, in fact, legal, nor whether the companies had a good-faith and objective belief that the requests were legal. What this bill does provide is a limited measure of court

review. It is not as robust as my amendment would have provided, but it does provide an opportunity for the plaintiffs to be heard in court, and it provides an opportunity for the court to review these request documents.

I believe the court should not grant immunity without looking into the legality of the companies' actions. So if there is an amendment that does support this, I would intend to vote for it.

But I believe the RECORD should be clear in noting that if this bill does become law, in my view, it does not mean the Congress has passed judgment on whether any companies' actions were or were not legal. Rather, it should be interpreted as Congress recognizing the circumstances under which the companies were acting and the reality that we desperately need the voluntary assistance of the private sector to keep the Nation secure in the future.

I believe this bill balances security and privacy without sacrificing either. It is certainly better than the Protect America Act in that regard, and makes improvements over the 1978 FISA law.

As I said, if a new bill is not in place by mid-August, the Nation will be laid bare and unable to collect intelligence.

This bill provides for meaningful and repeated court review of surveillance done for intelligence purposes. It ends, once and for all, the practice of warrantless surveillance, and it protects Americans' constitutional rights both at home and abroad. It provides the Government with the flexibility it needs under the law to protect our Nation. It makes it crystal clear that this is the law of the land and that this law must be obeyed.

I yield the floor.

The PRESIDING OFFICER (Mr. WEBB). The Senator from Georgia is recognized.

Mr. CHAMBLISS. Mr. President, I ask unanimous consent that the unanimous consent agreement be amended, and that following my comments, Senator SANDERS be recognized, and that following Senator SANDERS, Senator HATCH be recognized.

The PRESIDING OFFICER. Is there an objection?

Without objection, it is so ordered.

Mr. CHAMBLISS. Mr. President, I wish to speak about H.R. 6304, the Foreign Intelligence Surveillance Act Amendments Act.

Before I do that, I wish to make a couple comments relative to the comments made by my colleague from California regarding the TSP or terrorist surveillance program implemented by the President within days after September 11, and make sure Americans are very clear about two points: First of all, Congress did know about this program. Members of Congress were briefed throughout the duration of this program. Members of Congress were briefed on a regular basis. That doesn't mean every Member of Congress but the leadership knew exactly what was going on, exactly what the President was doing. They were kept very informed.

Secondly, the targets of the terrorist surveillance program were not Americans; the program targeted the communications of al-Qaida, that we knew—not guessed but that the intelligence community knew were used by al-Qaida. Today, al-Qaida gets up every morning, just as they did before and after September 11, and they think of ways to kill and harm Americans. Our intelligence community, without getting into the details of it, suffice it to say, has done a magnanimous job since then in protecting Americans.

The fact that we have not suffered another attack on domestic soil since then indicates the terrific job that members of the intelligence community have done. The terrorist surveillance program that was implemented by the administration immediately after September 11 is a major factor in why we have not suffered another act of terrorism on domestic soil. Information gathered from the terrorist surveillance program was used rightly to disrupt terrorist activity, both domestically as well as abroad. Some of the instances where the terrorist surveillance program has stopped attacks and saved lives are very public right now.

Again, I rise to comment on H.R. 6304. This critical legislation has been the subject of many negotiations and, although the legislation is not perfect, I am pleased with the bipartisan nature of this compromise bill. I commend Vice Chairman BOND, Congressman HOYER, and Congressman BLUNT on their work.

I am satisfied that this legislation will provide our intelligence agencies with the legal tools necessary to perform their jobs, the flexibility they require, and the capability to protect Americans' civil liberties. However, I am perplexed it has taken Congress this long to adopt meaningful legislation necessary to protect our country; legislation which Congress knew, at least since last August, needed to be enacted expeditiously. Normally, Congress is accused of being guided by expediency rather than principle but not usually in national security matters. Intelligence is bipartisan. Securing our Nation is bipartisan. It is in every American's interest that Congress act quickly to protect our Nation from terrorist attack, espionage, or any other harm. Yet the bill before us now is substantially the same as S. 2248, which was drafted in a bipartisan nature by Senators ROCKEFELLER and BOND and passed the Senate over 4 months ago, on February 12, 2008, with a supermajority vote of 68 in favor and only 29 in opposition.

Last summer, our intelligence community officials informed us that, as a result of a decision by the FISA Court and changes in technology, they had lost the ability to collect intelligence on terrorists around the world who wish to harm the United States. Congress responded to these pleas from our intelligence community and passed the Protect America Act, which temporarily fixed this problem, but we knew then we had to have a more permanent solution. Despite this knowledge and despite the hard work of the Senate Intelligence Committee for the previous 10 months, Congress failed to fix FISA in February. The House leadership refused to consider the Senate-passed bill, despite stated support from a majority of that body's members. I can only surmise that there were political, rather than substantive, reasons that prevented this legislation from passing months ago. Some may say this is the nature of one of the political branches of Government. What no one talks about is the harm this has caused.

But, as a result of the Protect America Act's expiration, our collection efforts have been degraded. The public likely is not aware, nor may be many Members of this Chamber, but the members on the Senate Select Committee on Intelligence have heard regularly about the disruptions and legal obstacles that have occurred as a result of our inaction. The week after the Protect America Act expired, the Director of National Intelligence told us that ''we have lost intelligence information this past week as a direct result of the uncertainty created by Congress' failure to act.'' Gaps in our intelligence collection began to resurface, and it has had a real and negative impact on our national security.

Our intelligence collection relies on the assistance of U.S. telecommunications carriers. These communication providers are facing multimillion dollar lawsuits for their alleged assistance to the Government after September 11, 2001. After the expiration of the Protect America Act, many providers began to delay or refuse further assistance. Losing the cooperation of just one provider could mean losing thousands of pieces of intelligence on a daily basis. According to the Director of National Intelligence, uncertainty about potential liability caused many carriers to question whether they could continue to provide assistance after the expiration of the Protect America Act.

In just 1 week after its expiration, we lost significant amounts of intelligence forever. We will never be able to recover those lost communications, nor will we ever know what we missed.

For this reason, it is crucial that any FISA legislation include retrospective, as well as prospective, immunity for telecommunications providers who assist the Government in securing our national security. Title II of this bill, just as title II of S. 2248, provides the minimum protections needed for our electronic service providers. In a civil suit against a communications provider, the Government may submit a certification that any assistance provided was pursuant to a Presidential authorization and at the time determined to be lawful. The district courts may review this certification, and if it finds that it is supported by substantial evidence, the court must dismiss

the case. This is not a commentary on, or a court sanction of, the President's alleged terrorist surveillance program. It is the right thing to do.

Unlike many countries which regularly suppress an individual's speech or violate an individual's right to privacy, a cornerstone of our democratic and free society is a limited Government—one that doesn't sanction Government intrusion on an individual's private life. The Government cannot infringe upon an individual's rights without due process. But, in order to preserve those rights, Americans rely upon the Government to provide that freedom and security to protect them from harm, whether it be from a criminal on the streets or from an international terrorist.

Under U.S. criminal law, the U.S. frequently requests the assistance of private citizens and companies in order to combat crime. These companies provide assistance, usually pursuant to a court order—but not always—to help keep Americans safe. When assistance is needed to combat terrorism overseas, patriotic U.S. companies step up to the plate and help their country. At a minimum, these companies rely upon Government assurances that their assistance is lawful. When sued in a court, they are sometimes unable to supply a defense for their actions without exposing Government secrets or jeopardizing Government investigations. Instead, they rely on the Government to come to their defense and assert Government sanction. In the case of the President's terrorist surveillance program—which despite leaks in the press, remains highly classified and secret—these companies are defenseless. If the Government can show a court its assurances—still classified—that the assistance was lawful, and the court determines upon substantial evidence that the company acted pursuant to a Presidential authorization or other lawful means, then our American companies should not be liable.

If any constitutional or privacy violation occurred, an aggrieved individual may still sue the Government. This bill, however, assures America's corporations that their good-faith assistance will not subject them to frivolous lawsuits from individuals who really are alleging a claim against the Government, not those who assist it. Ordinarily, Americans should be protected against Government intrusion, but it should not be at the cost of higher phone and Internet access bills for customers just so these corporations can defend themselves against frivolous lawsuits.

This legislation preserves liability protection for Americans, and I am pleased to see that our bipartisan, bicameral negotiators sustained this provision. Title II of this legislation is largely the same as what was in the Senate-passed bill. I commend the House for passing legislation including this provision and the Senate for now taking much-needed action.

One thing that came out of the debate on this particular aspect of the bill within the Intelligence Committee was the fact that in this situation it is pretty obvious that the Government was in a crisis situation just following September 11. We had just been attacked by terrorists. We needed the assistance of private corporations in America. When we asked for their assistance, they stepped up to the plate. We know it is going to happen again. It may not be a terrorist attack next time; it may be some other crisis that is inflicted upon America. At that point in time, we are going to need the assistance of the private sector in America again. If we don't tell the private sector, in this particular case, that we are going to protect them and make sure they suffer no loss as a result of stepping up to help protect Americans following September 11, then should we expect the private sector to step up next time, whatever the crisis may be? The answer to that is obvious, and, in a very bipartisan way within the Intelligence Committee, there was general agreement that is the way we should proceed.

The only real and meaningful differences between this bill and the Senate-passed bill are more judicial involvement in the President's constitutional duty to conduct foreign affairs and protect our Nation. Our intelligence agencies will be allowed to collect intelligence against individuals located outside the United States, without having to first seek individual court orders in each instance.

Rather than having to seek numerous court orders and losing time and valuable collection opportunities, this legislation will require a reasonable belief that the target is outside the United States, so our intelligence analysts have the ability to assess and task new collection in real time; that is, before the bad guys get away, switch phones, and continue their planning. Unlike the Senate-passed bill, this legislation requires prior court review and approval of the targeting and minimization procedures submitted by the Attorney General, our chief law enforcement and legal advisor, and the Director of National Intelligence, our primary national security adviser.

I wish to state in the record that the exigent circumstances provision included in this legislation is not meant to be limited. Rather, it is a provision necessary to allow the retention of intelligence gathered in those situations where prior court approval was not practical.

Under no circumstance is it acceptable for intelligence gathered under an exigent circumstance, and later found to be acceptable by the court, to be discharged. Intelligence does not wait for court orders, and it must be collected timely. The intelligence community should not have to wait for a court order to continue collection against those who seek to harm America. If the court later determines that the targeting and certifications were lawful, then our intelligence officials should be allowed to review that which was collected.

It is now time for us to make more permanent changes to FISA to ensure we have the ability to obtain intelligence on terrorists and our adversaries. Although not a perfect bill, the FISA Amendments Act will fill the gaps identified by our intelligence officials and provide them with the tools and flexibility they need to collect intelligence from targets overseas, while at the same time providing significant safeguards for the civil liberties of Americans. This bill will ensure that we do not miss opportunities to target and collect foreign terrorist communications just because our operators had to get permission from a U.S. court first.

Let me be clear, these amendments to FISA would only apply to surveillance directed at individuals who are located outside of the United States. This is not meant to intercept conversations between Americans or even between two terrorists who are located within the United States. The Government still would be required to seek the permission of the FISA Court for any surveillance done against people physically located within the United States, whether a citizen or not.

In fact, this legislation will provide new protections for U.S. citizens under our law. Under this bill, for the first time, a court order must be obtained to conduct electronic surveillance for foreign intelligence purposes against an American who is located outside the United States. It also includes a prohibition on reverse targeting; that is, our intelligence agencies will not be allowed to target an individual overseas with the intent and purpose of obtaining a U.S. person's communications.

I am satisfied that the FISA Amendments Act will close gaps in our intelligence collection as well as provide some legal certainty to those patriotic companies that assist us. I urge my colleagues to support this bill and give our professional intelligence officials the confidence they need to secure our Nation.

Mr. President, I yield the floor.

The PRESIDING OFFICER. The Senator from Vermont.

Mr. SANDERS. Mr. President, I come to the floor today to express my strong opposition to H.R. 6304, the FISA Amendments Act, and my opposition to invoking cloture on the motion to proceed to this legislation.

Let me tell you what I think this debate is about and what it is not about. What it is not about is whether anyone in the Senate or the Congress is not going to do everything he or she can to protect the American people from another terrorist attack. It is not about whether we are going to be as vigorous as we can in hunting down terrorists. It is not about whether we are going to be vigilant in the war against terrorism. That is what it is not about. What it is

about essentially is whether we can be forceful and successful in fighting terrorism while we protect the constitutional rights that make us a free country. That is what this debate is about.

I happen to believe that with strong law enforcement, with a strong and effective judiciary, with a Congress working diligently, we can be vigorous and successful in protecting the American people against terrorism and we can do it in a way that does not undermine the constitutional rights which people have fought for hundreds of years to protect—the Constitution, which today remains one of the greatest documents ever written in the history of humanity.

We hear a whole lot about the word ''freedom.'' Everybody in the Senate and the House is for freedom. But what do we mean by freedom? What we mean by freedom is that we want our kids to be able to read any book they want to read without worrying that the FBI is going to come into a library or a bookstore to check on what they are reading. We want people to be able to write letters to the editor critical of the President, critical of their Congressmen or their Senator without worrying that somebody is going to knock on their door. We want people to have the freedom to assemble, to demonstrate without worrying that someone has a camera on them and is taking notes and later on there will be retribution because they exercised their freedom of assembly and their right to dissent.

That is really what the debate is about. It is not whether you are for protecting the American people against a terrorist attack. That is not what the debate is. The debate is whether we, as a great country, will be capable of doing that within the context of our laws, within the context of our Constitution, and understanding that we are a nation of laws and not of men, regardless of who the President is.

Before I go into deeper concerns, I begin by recognizing the very hard work done by members of both the Intelligence Committee and the Judiciary Committee in the Senate and in the House. We all know these are not issues resolved, and while I have strong disagreements with the final product, I know that the intentions of all the Members on both sides of the aisle were honorable.

Although there have been some improvements made to this bill that the Senate passed earlier this year, including having the inspector general review the so-called terrorist surveillance program and making it clear that FISA and criminal law are the exclusive process by which the electronic surveillance can take place rather than some broad power of the President, this final legislation is something I simply cannot support.

This legislation does not strike the right and appropriate balance between ensuring that our intelligence community has the tools it needs to protect our country against international terrorism and protecting the civil liberties of law-abiding Americans. Instead, it gives a get-out-of-jail-free card to companies that may well have violated the privacy and constitutional rights of millions of innocent Americans.

I am proud to be a cosponsor of the amendment that will be offered, as I understand it, by Senators DODD, FEINGOLD, and LEAHY to strike title II of the Intelligence bill which deals with retroactive immunity. This is a very important amendment, and I hope a majority of the Members of the Senate will support it.

It is important in this debate to put the discussion of this FISA legislation in a broader context. The context, sadly, in which we must view this legislation has everything to do with the history of what this administration currently in power has done since 9/11. Sadly, what they have done is shown the people of our country and people all over the world that they really do not understand what the Constitution of the United States is about and, in fact, they do not understand, in many instances, what international human rights agreements, such as the Geneva Convention, are all about.

So when we enter this debate, we should not look at it that this is the first time we are addressing the issue of fundamental attacks on American civil liberties. This has been going on year after year. This is more of the same from an administration which believes, to a significant degree, that they are an imperial Presidency, that in the guise of fighting terrorism, a President has the right to do anything against anybody for any reason without understanding what our Constitution is about or what our laws are about.

Let me give a few examples to remind my colleagues what kind of credibility, or lack thereof, this administration has in the whole area of civil liberties.

Among other things, this administration has pushed for, successfully, the passage of the original PATRIOT Act and the PATRIOT Act reauthorization. Under that bill, among many things, an area I was involved in when I was in the House was a provision that says, without probable cause, the FBI can go into a library or bookstore and find out the books you are reading, and if the librarian or bookstore owner were to tell anybody, that person would be in violation of the law. Do we want the kids of this country to be frightened about taking out a book on Osama bin Laden because somebody may think they are sympathetic to terrorism? I don't think so. What freedom is about is encouraging our young people and all Americans to investigate any area they want. I don't want the people of this country to be intimidated. That is not what free people are about.

Further, under this administration, we have seen an illegal and expanded use of national security letters by the FBI.

We have seen the NSA's warrantless wiretap program, which, in fact, is what we are discussing today.

We have seen the President using signing statements to ignore the intent of Congress's law in an unprecedented way. The President says: Oh, yes, I am going to sign this bill, but, by the way, I am not going to enforce section 387; I don't like that section. Mr. President, that is not the way the law works. If you don't like it, you have the power to veto. You cannot pick and choose what provisions you want. But that is, to a large degree, what this President has done.

What we have seen in recent years is a profiling of citizens engaged in constitutionally protected free speech and peaceful assembly. As I mentioned earlier, the right to dissent, the right to protest is at the heart of what this country is about. I do not want Americans to be worried that there is a video camera filming them and they will be punished somewhere down the line because they exercised their freedom of speech.

We have seen data mining of personal records.

We have seen the Abu Ghraib prison scandal, which has embarrassed us before the entire world.

We have seen a broad interpretation of congressional resolutions regarding use of military force as justification for unauthorized surveillance and other actions.

We have seen extraordinary renditions of detainees to countries that allow torture. All over the world, people are looking at the United States of America and saying: What is going on in that great Nation? We tell them to be like us, to support democracy, to support human rights, and then we engage in torture and we pick people up and we take them to countries where they are treated in horrendous ways. This is certainly one of the reasons respect for the United States has gone down all over this world, which is a tragedy unto itself but obviously makes it harder for us to bring countries together in the important fight against international terrorism.

We have seen an administration that has gotten rid of the rights of detainees to file habeas corpus petitions—simply put people away, deny them access to a lawyer, deny them the right to defend themselves.

We have seen political firings in the Office of the U.S. Attorney.

We have seen destruction of CIA tapes.

The list goes on and on.

So the issue we are debating today has to be seen in the broader context that for the last 7 years, there has been a systematic attack on our Constitution by an administration which believes that, in the guise of fighting terrorism, they can do anything they want against anybody they want without getting court approval or without respecting our Constitution and the rule of law.

I wish to touch on one point. I know Senator FEINGOLD, Senator LEAHY, and Senator DODD have touched on this bill at great length. I just want to focus on one issue, and that is the retroactive immunity granted to the telecommunications companies.

Why is it important that we support the amendment which does away with that retroactive immunity? It is very simple. The argument is that the President of the United States went to these companies and said: Look, I need your help in doing something, and the companies obliged.

Then the issue is, well, why are we punishing them, even if they broke the law? And the answer is pretty simple: It is precisely that we are a nation of laws and not of men. If we grant them retroactive immunity, what it says to future Presidents is, I am the law because I am the President, and I will tell you what you can do. And because I tell you what to do or ask you to do something, that is, by definition, legal. Go and break into my political opponent's office. Don't worry about it; I am the President. I am saying it is for national security. Those guys are bad guys, just do it. I am the President, and that is all that matters.

That is the precedent that we are setting today, and I think it is a very bad precedent. Trust me, Verizon and these other large telecommunications companies, multi, multibillion-dollar companies, have a lot of lawyers. They have a lot of good lawyers. And what we know, in fact, is that some of the telecommunications companies—at least one that comes to mind—said: No, Mr. President, sorry, that is unconstitutional. That is illegal, I ''ain't'' gonna do it. I applaud them for that. But others said: Hey, the President is asking us, we are going to do it.

The point is, the President is not the law. The law is the law. The Constitution is the law. And I don't want to set a precedent today by which any President can tell any company or any individual: You go out and do it; don't worry about it; no problem at all. That is not what this country is about.

So let me conclude, Mr. President, by saying this is a very important issue which concerns millions and millions of Americans. Bottom line, every American, every Member of the Senate understands we have to do every single thing we can to protect the American people from terrorist attacks. There is no debate about that. Some of us believe, however, that we can be successful in doing that while we uphold the rule of law, while we uphold the Constitution of this country, which has made us the envy of the world and for which we owe the Founders of our country and those who came after, fighting to protect those civil liberties, so much.

Madam President, I yield the floor.

The PRESIDING OFFICER (Mrs. McCASKILL). The Senator from Utah.

Mr. HATCH. Madam President, Congress has been working on FISA modernization since April of 2007. That is over 425 days ago. It is simply amazing to me that it would take this long. As I have often said, the Constitution of the United States was written in about 115 days, and that included travel time on horseback for the Founding Fathers. We have spent plenty of time on this issue.

So why is it taking so long? Should this issue be controversial? I can only surmise that the delay is due to the ominous sounding terrorist surveillance program. That is the program where the President had the audacity to allow the intelligence community to listen to international communications where at least one person was suspected to be a member of al-Qaida—the same al-Qaida who killed nearly 3,000 innocent American civilians on September 11; the same al-Qaida who since that day has committed attacks in Istanbul, Algiers, Karachi, Islamabad, Casablanca, London, Madrid, Mombasa, the Gulf of Aden, Riyadh, Tunisia, Amman, and Bali; the same al-Qaida whose mission statement can be summed up in three words: ''Death to America.''

This is the group the President targeted. He wanted an early warning system to help prevent future attacks—a terrorist smoke detector, if you will. We often are reminded that we are fighting against an unconventional enemy, one that has asymmetrical advantages against us. Al-Qaida is not a nation state and adheres to no treaties or principles on the conduct of war. They wear no uniforms. They hide in peace-loving societies and deliberately conduct mass attacks against unarmed civilians. But we also have asymmetrical advantages.

As the most technologically sophisticated Nation in history, we have huge advantages that derive from this expertise. We are also—and I certainly see this as an asymmetrical advantage over the barbarism that is al-Qaida—a nation of laws. Finally, our surveillance laws are going to be modernized so we can continue to use our own technological superiority to help prevent future attacks against our public and the public of nations that have joined us in our fight to liquidate al-Qaida.

This is what the President was always intent on doing. So he initiated the terrorist surveillance program, and the administration provided appropriate briefings to the chairs and ranking members of the Senate and House Intelligence Committees and to the leaders of both parties in both Chambers. When a new Member of Congress assumed one of those positions, they were given a similar briefing.

Last year, the Senate Intelligence Committee and numerous staff conducted a full review of the terrorist surveillance program and found no wrongdoing.

So why has it taken us so long to get here, and what is the concern that has caused the delay; that the President listened to the international communications of al-Qaida after 9/11? No President would ever engage in this type of activity, except of course President Woodrow Wilson, who authorized interceptions of communications between Europe and the United States, and President Franklin Roosevelt, who in 1940 authorized interception of all communications into and out of the United States.

I guess the fourth amendment and the media's outrage were more flexible under Democratic Presidents. But let's leave these situations aside and continue to focus on the program one of my Democratic colleagues previously called ''one of the worst abuses of executive power in our history.''

With all due respect to my colleague, if listening to the international communications of al-Qaida is one of the biggest power grabs in the country's history, then our Nation has lived a charmed existence, worthy of envy throughout the world.

We should never forget the reasons for the creation of this program. It is no accident that America has not been attacked since September 11. Is it more than luck? Did al-Qaida take a hiatus from terrorist attacks? Given al-Qaida's numerous foreign attacks during this same timeframe, I think the answer is clearly no. So something must be working. Perhaps the terrorist surveillance program has played a role.

But what about warrantless wiretapping? That phrase certainly means something illegal, right? Not really. As often as that phrase is repeated, what does it really mean? Does warrantless wiretapping automatically mean unconstitutional? That is certainly what we are led to believe by the handwringing blatteroons of the day. But this is simply not true.

The fourth amendment does not proscribe warrantless searches or surveillance. It proscribes unreasonable searches or surveillance. For example, let's look at a few of the numerous warrantless searches that are performed every day: Waiting for warrantless searches at the U.S. Border Inspection Station. Look at that mess.

Look at this: Waiting for warrantless searches at the U.S. Supreme Court. It is done every day that the court is in session, and even when it isn't sometimes. Waiting for warrantless searches at the National Archives. In other words, waiting to be searched before viewing the fourth amendment. This happens every day. I see that there are members of the public in the gallery above. Every last one of them went through a warrantless search just to get into this building.

So the question becomes whether a warrantless search or surveillance of international communications involving al-Qaida is reasonable or, to put it another way, whether signals intelligence against a declared enemy of the United States is reasonable. In my opinion, and I think in the opinion of the vast majority of our body, it certainly is.

Let's also look at what the Foreign Intelligence Surveillance Court of Review, the highest court that has considered this issue, has said:

The Truong court, 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.

That is out of in re: Sealed, case 310 F3d, 717, the FISA Court of Review, 2002.

While the phrase ''warrantless wiretapping'' has been cited incessantly, there is another phrase mentioned nearly as often, and that is ''domestic spying.'' In order to better evaluate this phrase, let's look at what the President said in a December 17, 2005, radio address that described the TSP.

In the weeks following the terrorist attacks on our Nation, I authorized the National Security Agency, consistent with U.S. law and the Constitution, to intercept the international communications of people with known links to al-Qaida and related terrorist organizations. Before we intercept these communications, the government must have information that establishes a clear link to these terrorist networks.

I don't see anything in that statement about domestic spying. I thought the definition of the word ''domestic'' was pretty clear. If the program intercepted communications in which at least one party was overseas, not to mention a member of al-Qaida, then it seems fairly obvious that those calls were—and I will emphasize this—not domestic.

Is this a domestic call? A foreign terrorist calling a terrorist within the United States? I hardly think so. Is this really such a hard concept? The last time I flew overseas, I didn't fly on a domestic flight. I flew on an international flight. My last phone bill showed there is a big difference between domestic calls and international calls.

Domestic spying may sound catchy and mysterious, but it is a completely inaccurate, even misleading, way to describe the TSP terrorist surveillance program—or FISA modernization. Why don't we describe them as international spying, which is what they really are? Isn't that a more accurate description? But I imagine international spying wouldn't raise the same level of fear and distrust in our Government that some on the left try to foster.

So while I regret the political machination that has turned this seemingly straightforward issue on its head, I am hopeful the time for debate is finally over. Yet some have suggested Congress should not pass a bill modernizing FISA. Even after such a prolonged period and extensive debate on the issue, they would prefer that we do nothing.

We are now hearing about efforts to strike or amend the immunity provisions in the compromise bill so that Members may express their views.

Is this really necessary? Did the multiple times the Senate has considered and rejected similar efforts mean nothing?

Look at this: The Senate has affirmed telecom civil liability protection in six separate votes. On October 18, 2007, the Senate Intelligence Committee rejects the amendment to strike the immunity provisions 12 to 3. That was bipartisan, by the way. On November 15, 2007, the Senate Judiciary Committee rejects amendment to strike immunity provisions 12 to 7. Again, bipartisan. On 12/13/07, the Senate Judiciary Committee rejects standalone Government substitution bill 13 to 5. On January 24, 2008, the full Senate tables the Judiciary's substitute, which does not include immunity, 60 to 36. On February 12, 2008, the full Senate rejects the amendment to substitute the Government for telecoms 68 to 30. On February 12, 2008, the full Senate rejects amendment to strike immunity provisions 67 to 31.

The last time I saw that and looked at those numbers, those were all bipartisan votes. The civil liability provision in the Senate bill, which has been tweaked in this compromise, is supported by a bipartisan majority of the House and Senate, after all this hullabaloo.

In addition, let us not forget the opinions of the State attorneys general who previously wrote to Congress to express their support for civil liability protection.

Look at all the State attorneys general who endorse immunity. State attorney general of Wisconsin, the attorney general of Rhode Island, the attorney general of Oklahoma, the attorney general of Colorado, the attorney general of Florida, the attorney general of Alabama, the attorney general of Arkansas, the attorney general of Georgia, the attorney general of Kansas, the attorney general of my beloved home State of Utah, the attorney general of Texas, the attorney general of New Hampshire, the attorney general of Virginia, the attorney general of North Dakota, the attorney general of North Carolina, the attorney general of South Carolina, the attorney general of Pennsylvania, attorney general of South Dakota, attorney general of Nebraska, the attorney general of West Virginia, the attorney general of Washington.

These are all legal officers, by the way, attorneys general of those very States.

Another complaint that has been mentioned is that this bill does not have adequate oversight. We have heard allegations that:

the government can still sweep up and keep the international communications of innocent Americans in the U.S. with no connection to suspected terrorists, with very few safeguards to protect against abuse of this power.

We have heard other allegations that this bill does not provide adequate protections for innocent Americans. Make no mistake. The role of the Federal judiciary into the realm of foreign intelligence gathering is greatly expanded by this legislation.

So when we hear the incessant claims that this legislation lacks meaningful review, I want people to be absolutely crystal clear on the staggering amount of oversight in this bill.

The Foreign Intelligence Surveillance Court was created by the 1978 FISA law for solely one purpose: This is Title 50 of the U.S. Code 1803(a): ''a court which shall have jurisdiction to hear applications for and grant orders approving electronic surveillance.''

Let's think about this. It is America in 1978. The Church Committee has published information about known abuses by the Government involving surveillance against American citizens. The public wanted action. So what did the 95th Congress do?

Did it create a Court with the authority to review and approve the intelligence community's foreign targeting techniques? No.

Did it create a Court with the ability to review and approve the techniques used to minimize incidental interceptions involving Americans? No.

Did it mandate the intelligence community to get a warrant when targeting United States persons overseas? No.

But the 110th Congress will mandate each and every one of those things by passing this bill.

For the first time, the FISC will review and approve targeting procedures to ensure that authorized acquisitions are limited to persons outside of the United States.

For the first time, the FISC will review and approve minimization techniques.

For the first time, the FISC will ensure that the foreign targeting procedures are consistent with the fourth amendment.

So given the staggering amount of oversight, there must be some sweeping new surveillance authority that would necessitate these changes, right? Wrong.

The ''broad new surveillance authority'' that we hear so much about is directed at one thing: the Government can target foreign citizens overseas after the FISC reviews and approves the targeting and minimization procedures. In layman's terms: the Government can listen to foreign citizens overseas to collect foreign intelligence information. That doesn't sound like broad sweeping authority to me. In fact, it is less authority than the Government had before.

Let me enumerate some of the many restrictions on this authority:

No. 1, the Government can't intentionally target any person known to be in the U.S.

No. 2, the Government can't intentionally target a person outside the U.S. if the purpose is to target a known person in the U.S.—reverse targeting.

No. 3, the Government can't acquire domestic communications in the U.S.

No. 4, the targeting has to be consistent with the fourth amendment to the Constitution.

And there is more: the Attorney General and the Director of National Intelligence have to develop and adopt guidelines to ensure compliance with these limitations. These guidelines must be submitted to Congressional Intelligence and Judiciary Committees as well as the FISC.

The Attorney General and the Director of National Intelligence shall assess compliance with the targeting and minimization procedures at least every 6 months. This assessment must be submitted to the FISC, and the Intelligence and Judiciary committees of both chambers of Congress.

The Inspectors General of the Department of Justice and each element of the intelligence community may review compliance with the targeting and minimization procedures.

Finally, this bill authorizes a horde of inspectors general to conduct a full review of certain communications surveillance activities—a review that the Senate Intelligence Committee has already conducted on a bipartisan basis and found nothing wrong. Vice Chairman BOND and the other negotiators agreed to narrow the scope of this review so that there would be minimal or no operational impact on our intelligence analysts. It should come as no surprise that we want intelligence analysts to focus on analysis, not spend limited time and resources digging up documents for redundant IG reviews.

So for those who criticize this bill as lacking oversight, I wonder if any level would be enough? I have no doubt that some would only be satisfied by specific individual warrants for each and every foreign terrorist overseas. This would complete the twisted logic that somehow giving complete constitutional protections to foreign terrorists leads to more protections for Americans. Do we really need to remind people that foreign citizens outside of our country, particularly members of terrorist organizations, enjoy no—none—no protections from our Constitution?

Make no mistake about the power the FISA Court will possess in foreign intelligence gathering following passage of this bill. If the Court finds any deficiency in the certification submitted by the Attorney General or Director of National Intelligence, then the FISC can direct the Government to cease or not initiate the foreign targeting. In other words—our collection would go dark. Fortunately, the Government will be able to rightly begin acquisitions pending an appeal to the Foreign Intelligence Surveillance Court of Review.

This is surely an intimidating environment for our intelligence analysts. Essentially, any accident or mistake will be highlighted to Congress. Unforgiving is not the word. I wonder how many private citizens would enjoy having policies at their jobs where any inadvertent error would result in notification to and review by Congress?

I will suggest that the amount of oversight in this bill should be revisited in the future; not to increase it, but rather to mandate more realistic and appropriate levels of review.

The multiple oversight initiatives in this legislation are not fulfilled by magic. It takes a tremendous amount of time and resources by the very analysts whose primary job is to track terrorists. As great as our analysts are, they can't be two places at once. There are only so many of them, and they don't have unlimited resources. It is worth noting what Director of National Intelligence McConnell said to Congress last September:

> Prior to the Protect America Act, we were devoting substantial expert resources towards preparing applications that needed FISA Court approval. This was an intolerable situation, as substantive experts, particularly IC subject matter and language experts, were diverted from the job of analyzing collection results and finding new leads.

The leaders of our intelligence community have to make wise choices when allocating the time and expertise of analysts, and their hands should not be unnecessarily tied by Congress. Analytic expertise on target is a finite resource; a finite resource which the public must understand is rendered against an enemy whose resources and capabilities remain obscured to us, while its intent remains deadly.

But I guess I shouldn't be surprised by the inclusion of these onerous oversight provisions, which no previous Congress felt the need to add. How many times have we heard claims that the Protect America Act would permit the Government to spy on innocent American families overseas on their vacations? Or innocent American soldiers overseas serving our country? Or innocent students who are simply studying abroad?

Painting this type of picture only feeds the delusions of those who wear tin foil hats around their house and think that 9/11 was an inside job.

Do we think so little of the fine men and women of our intelligence community that we assume they would rather target college kids in Europe than foreign terrorists bent on nihilistic violence?

The absurdity of these accusations cannot be understated and we should not tolerate them. We should never forget that our intelligence analysts are not political appointees. They serve regardless of which President is in office, or which political party is represented. They take an oath to defend the Constitution. And rather than respect and trust their judgment and integrity, we layer oversight mechanisms that treat them like 16-year-olds who just got their first job and have to be birdwatched for fear they are stealing money from the cash register.

Now I agree there are some instances in which we may want to target individuals studying abroad. I am not necessarily talking about institutions of higher learning like the Sorbonne, but rather terrorist training camps spread through some hostile regions of foreign countries. These are the type of schools that our intelligence community is interested in. When it comes to these students, I want to know what they are up to.

Here is a good illustration: Supposed ''Graduation'' of Taliban Members on June 9, 2007. I want to know what they are about.

After addressing some of the critiques of this bill by others, let me offer one of my own. This bill calls for prior court review and approval of certifications presented to the FISC before foreign intelligence collection can begin. As I have consistently stated throughout these FISA modernization discussions, I believe this principle is unjustified and unwise.

The idea that the executive branch of the Government needs the explicit approval of the judiciary branch before collecting foreign intelligence information from foreign citizens in foreign countries is simply wrongheaded and is contrary to our Constitutional principles. I don't care if the President represents the Democratic party, Republican party, Green party, Independent party, or Whig party; he shouldn't need permission to track foreign terrorists.

With that said, I am encouraged that the bill includes a provision which would allow collection before court review of procedures if ''exigent circumstances'' exist. Even with this provision, I am troubled that one of my Democratic colleagues in the House made the following statement last week about this provision:

> This is intended to be used rarely, if at all, and was included upon assurances from the administration that agrees that it shall not be used routinely.

This begs the question, is tracking terrorists not an ''exigent circumstance''? I urge the executive branch to utilize this provision appropriately and as often as necessary following the informed judgment of those with the appropriate acumen to make such decisions. The phrase ''intelligence * * * may be lost'' means what it says: if the executive branch determines that we may lose intelligence while waiting for the Court to issue an order, then the Intelligence Community should do what our Nation expects: it should act and act quickly. The executive branch should not hesitate to utilize this authority because of fear of reprisal from those who may seek to advance political agendas—which we have seen plenty of, and some on this floor today.

Finally, I want to highlight the extensive efforts of the negotiators of this bill in both chambers. I especially want to express my appreciation and gratitude to my friend and colleague KIT BOND, the dedicated vice chairman of the Intelligence Committee, who adeptly navigated and managed the

tense and tedious negotiations to bring about the opportunity for passage of this historic legislation, the most extensive rewrite of foreign intelligence surveillance laws in 30 years.

As you can tell from the tone of my remarks, I am less than pleased at some of the compromises made in these negotiations. I don't like the expansion of the judiciary branch into what I believe are activities rightly under the executive's prerogative. But I came to the Senate to achieve improvements for the American people, not to be an ideologue. My entire career as a legislator has been in recognition that compromise gets more done for the public than obstruction. The people of Utah didn't send me to the Senate to obstruct business, but to get business done. Nowhere is this more important than on matters where the Congress is enjoined by our citizens to improve the national security. I am a pragmatist, and I am a realist. Part of being a realist, these days, is to recognize that there is a disturbing backlash against the national security policies of this administration. Fueled by dissatisfaction over mistakes in Iraq, over frustration that the fight there and in Afghanistan continues into its seventh year, and that Al Qaeda remains a credible and deadly threat, many people in the majority party have gone beyond criticism to denunciation, to condemnation and obstruction. I am hoping that the general election before us will provide the opportunity for a truly grand debate on what we consider are threats, and how we believe we must continue to address them. But so far the debate has not been joined, and the rhetoric is becoming more poisonous. I have come to this floor and expressed my own criticisms of this administration, but I have never had reason to condemn them as operating in bad faith when it came to defending this Nation.

I know this President. The President is a wonderfully good man. He has done everything in his power to try to protect us. He is an honest man. He has had untoward criticism from the media day in and day out. He has been deliberately maligned by people who should know better.

Yes, this administration has made mistakes, but they have not been made intentionally. It is pathetic the way the media and many have treated this President. I think we have got to go back to where we respect our President and we show some degree of tolerance for the tough job that being President is.

It is regrettable for me that the rhetoric around the terrorism surveillance program has devolved too often into fire but no light. So while I am concerned about some of the compromises made in this bill, I am grateful for all of the work done to bring it to a vote this week. We have to have this bill to protect the American people.

I urge my colleagues to support this monumental and historic legislation. Our country continues to be both the envy of the world and the target of those who seek to advance their warped, violent ideology. We know the threats are out there. We do not have to live our lives in fear, but we should acknowledge that the world changed on September 11 and we must remain vigilant.

Let's ensure that all of the dedicated and noble professionals who play a part in ensuring our liberty and safety are not hampered by partisan problems that we have the ability and responsibility to correct.

The legislation before us makes an important and admirable attempt to do just that. I hope my colleagues will support this legislation and support final passage. It is overdue. It has been delayed too long. We have been playing around with this far too long. There have been so many unjust criticisms, I am sick of them, to be honest with you. It is almost as though politics has to rear its ugly head every time we turn around here. A lot of it is driven by the fact that people resent the President of the United States. They do so unjustly, without proper sense, in ways that are detrimental to our country and future presidencies that will come into office. This President has had very difficult problems to handle.

I believe I am the longest serving person on the Senate Select Committee on Intelligence. I have been around a long time. I have seen a lot of things. I have tried to help prior Presidents as I have played a role on the Intelligence Committee. I have done so, I believe, without resorting to partisan attacks. We have had too many partisan attacks around here, and I think too many vicious attacks against the President and, I might add, against these unnamed, highly classified unknown, except by those in the intelligence community, telecom companies that patriotically helped our country to protect us, that have gone through untold expense, the deprivation and harm caused by the zealousness of those who believe that only they can protect the civil liberties of this country, when, in fact, that is what the telecom companies were cooperating to do.

I thank all of the Intelligence Committee staffers who have played such a big role in helping this bill to come to the floor. We have a very dedicated staff on the Intelligence Committee. I have to say that in this current Intelligence Committee I have seen more partisanship than I have seen in the past. But, by and large, when we passed the original bill out of the committee, it was passed 13 to 2, and we worked together in a very good way on that committee.

So I thank those staffers who worked so hard to try and help us all resolve this set of difficulties. I hope everybody in the Senate will vote for this bill and send it out with resounding victory.

I yield the floor.

The PRESIDING OFFICER. The Senator from Oregon.

Mr. WYDEN. Madam President, soon the Senate will take up the Foreign Intelligence Surveillance Act. It, of course, is known as FISA. FISA may not be a household word to most Americans, but a properly written FISA reauthorization is exceptionally important to the well-being of our country and it needs to meet a simple test: It must allow our country to fight terrorism ferociously and still protect our individual liberty.

I do not know how many Senators have traveled to the other end of Pennsylvania Avenue to personally read the legal opinions from the Department of Justice on the warrantless wiretapping program that is at the center of this debate. Someday these opinions are going to become public. Someday the American people will see how flimsy the legal reasoning is behind warrantless wiretapping. Someday the American people will see the damage that is done to our Nation when the executive branch tries to rewrite important national security law in secret.

The warrantless wiretapping program is not the first of this administration's counterterrorism programs that is built on legal quicksand. We have seen the coercive interrogation program, and the detention program at Guantanamo. Again and again on these vital counterterrorism programs, the administration has overreached, it has fallen short, and then it has come to the Congress and asked that the Congress clean up these legal messes. I am especially troubled by the provisions in this reauthorization of the FISA bill that grant blanket retroactive immunity to any telecommunications company that participated in the warrantless wiretapping program. I want to spend a few minutes to unpack this issue and discuss why I think it is such a significant mistake to reauthorize the program in this fashion and to have what amounts to a blanket amnesty provision for those who may have been involved in illegal activity.

Many have argued that companies that were asked to participate in the warrantless wiretapping program should be treated leniently since they acted during a state of national panic and confusion. I have given this argument a lot of thought and, frankly, I think there is a valid rationale behind that thinking if you are talking about a short period of time. But that is not what is being discussed here. The warrantless wiretapping program did not last for a few weeks or a few months as America worried about the prospect of another attack. It went on for nearly 6 years. At some point during that nearly 6-year period, any company participating in the program had an obligation to stop and to consider whether what they were doing was legal.

Others have suggested that if you do not give amnesty to the companies now, it is going to be impossible to get

cooperation from other companies in the future in the fight against terrorism. I do not buy that argument. Our country is full of patriotic citizens and businesses that are eager to do their part and to serve their Nation. I will say, I think it is insulting to suggest that American businessmen and women will be less patriotic if the Congress does not grant amnesty to the phone companies. People of this country love our Nation, and I believe they step up, they come forward whenever they can.

I hope, however, that they are not going to say: Well, okay, when the Government breaks the law we will automatically step forward in those instances. When American businesses are asked to participate in a program that looks as if it could be illegal, we all say, that is the time to hold on. I think it is important, particularly for our major businesses, to follow the law and not just the words of the President. I am disappointed that this legislation includes this amnesty provision. I hope as colleagues continue to examine the bill, they understand what is at issue.

If the legislation passes, the Attorney General will be able to stop any of the lawsuits against the companies dead in their tracks. All the Attorney General will have to do is tell the judges considering these cases that any corporation that participated in the program was told by the Government that what they were doing was legal. They will not have to actually prove it was legal, they will not have to provide any evidence, they will not have to cite any statutes, they will not have to make any legal arguments whatsoever.

In my view, this amounts to self-certification. Self-certification runs counter to the whole idea of the Foreign Intelligence Surveillance Act in the first place. The Foreign Intelligence Surveillance Act is based on the notion that the way to keep classified intelligence activities from intruding on Americans' privacy is to make sure there is a significant measure of independent judicial oversight. The judges in this situation will be allowed to examine as many documents as they like. But, in this instance, they will not actually be allowed to exercise independent judgment at all. As long as they see a piece of paper, a piece of paper that gets held up from a few years ago, a Presidential permission slip, if you will, that claims the program is legal, they will be required to grant immunity to the phone companies. Even the distinguished leader in the House, the minority whip, has acknowledged that this would be a mere ''formality.''

The concept of independent oversight that is so central to the Foreign Intelligence Surveillance Act and that has worked so well in practice simply, in my view, should not be transformed into an approach that effectively permits the administration to self-certify with respect to these particular cases.

I want to be clear that I cannot begin to divine how various matters in litigation will come out. In addition to the constitutional issues that are at stake, there is a number of contentious matters regarding standing, injury, a host of very difficult legal problems involved. I think the judges in these cases will need to consider all of the issues if the cases go forward. That is what makes the judicial process in the original statute so important. It is independent. They look at all of the factors that are relevant. But I will say that I did not think the Congress or I should substitute our judgment for the judgment of the courts, and that is, in effect, what happens if the legislation goes forward as written and blanket immunity is granted to every company that participated in the program.

It saddens me to have to oppose the legislation as written. I do so knowing that the bill contains a number of very important provisions and, with respect to individual liberty and the rights of our people, contains some significant steps forward. I am especially grateful to Senators ROCKEFELLER and BOND for working very closely with me to ensure that Americans who travel overseas don't lose their rights when they leave America's shores. That is the status today, regrettably. In this area, Senators ROCKEFELLER, BOND, myself, WHITEHOUSE, FEINGOLD, a number of us who serve on the Senate Select Committee on Intelligence worked in a constructive, good-faith way with the Bush administration. In this legislation, we have put into law that in the digital age, your rights are going to travel with you. You don't lose your rights. If you are a serviceman from the State of Missouri or a businessperson from another part of the country, you won't lose your rights when you leave American soil. That is as it should be. It is a significant expansion of the individual liberties of our citizens. They should not give up their rights when they travel. They ought to have rights that do travel in a world with modern communications and modern transportation. That provision is part of this reauthorization.

However, I feel so strongly about the ill-advised nature of the provisions that provide for blanket amnesty that I must oppose this bill as written. I think when history looks back at what happened, the warrantless wiretapping program, they are going to say that this program, along with several other flawed counterterrorism programs that have come from this administration, was a mistake. We should not compound those mistakes by reauthorizing this legislation that contains a blanket grant of immunity at a time when Americans understand that it is possible to fight terrorism relentlessly, fight terrorism ferociously without trashing our rights and liberties simultaneously.

We can do better. The Senate will have an opportunity to do better. A number of colleagues are going to be advocating proposals to strip the legislation of the amnesty provision. I hope those provisions will be successful.

I would like to pass this bill when we have an opportunity to strike a better balance between fighting terrorism aggressively and protecting the liberties of our citizens.

With that, I yield the floor.

The PRESIDING OFFICER. The Senator from Connecticut.

Mr. DODD. Madam President, before our colleague leaves the Chamber, I commend him for his statement. I had a chance to listen to part of it before coming to the floor of the Senate. This is a long-held view of my colleague when it comes to civil liberties and the rule of law. I commend him for remaining consistent in that insistence. He is absolutely correct that this is not a choice between security or liberty. In fact, I argue, as he has, that when we begin to retreat on the rule of law, we become less secure as a people. We have learned that lesson painfully throughout history. This is the time for us to be vigilant, both in terms of our security and also when it comes to our rights. This is an issue that ought not divide people based on our determination to deal with terrorism or those who wish to do great harm to our country but to recognize that historically, when we have been motivated by fear and have failed to stand up for basic rights, we have made horrendous mistakes. When we have stood up for our rights as well as insisting on our security, we have done our job as a generation, as previous ones have as well.

This is one of those moments history will look back upon. Why did we say that 17 phone companies that relied on a letter and not much more than that decided for over 5 years to invade the privacy of millions of Americans and would still be doing it today but for a whistleblower who revealed the program? Why did they not seek the FISA Court, as 18,748 other cases that been submitted and only 5 examples when they were turned down seeking a warrant since 1978? Why in this case did the Bush administration decide to avoid that normal process and go with a simple letter, without any legal justification I can determine, and get that kind of reaction? Why should we not know that? Why should not the American people know that? What happened here?

That is what the Senator is insisting upon. We will not know the answers to those questions if we, as a legislative body, by a simple vote here, declare that the courts have no business examining the legality of this action. We will avoid that responsibility by casting a vote to keep this immunity process in place. I will be joining him. In fact, I will be offering the amendment to strike the immunity provisions, to do our job when it comes to dealing with FISA, to modernizing it, but not to grant immunity to 17 phone companies.

Quest, to their great credit, when they were given that letter, said: We need more legal justification. They did

not engage in this program. Not all phone companies did. But the ones that did bear the responsibility to determine whether what they did was legal. We will never know the answer to that if the Senator from Oregon and I do not prevail on our amendment.

I commend him immensely for his statement.

The PRESIDING OFFICER. The Senator from West Virginia.

Mr. ROCKEFELLER. I thank the Chair.

Madam President, the Senate today—hopefully, tomorrow—returns to debating the matter of modernizing FISA and, more specifically, the Foreign Intelligence Surveillance Amendments Act of 2008. After many months of careful and often very difficult negotiations, we bring to the Senate an agreement that many believed could actually never be achieved, that is bipartisan legislation aimed at protecting the Nation's security and civil liberties, supported by the House, by the Senate, as well as both the Attorney General and the Director of National Intelligence.

The bill before us reflects the fact that FISA, as it was created in 1978, has increasingly become outdated and hindered our Nation's ability to collect intelligence on foreign targets in a timely manner. It is the direct result of changing technologies, advances in technology, in telecommunications, and the need to evolve and meet today's threat facing our Nation; namely, global terrorism and the proliferation of weapons of mass destruction.

The fact is, as telecommunications technology has changed, intelligence agencies have been presented with collection opportunities inside the United States against targets overseas. Yet, because of the way FISA was written in 1978, they could not take full advantage of these new opportunities.

Finding a solution to this problem has not been easy. It was made more complicated by the President's decision, in the aftermath of the September 11, 2001, disaster, to go completely outside of the FISA rather than work with Congress to fix the situation. That decision was complicated even further by the fact that the President put telecommunication companies in a precarious position by not giving them the legal security of the FISA Court, even when they were told their efforts were legal and necessary to prevent another terrorist attack.

Early last year, at the start of our tenure as the new chairman and vice chairman of the Senate Intelligence Committee, Senator BOND and I agreed that our top priority was going to be to modernize FISA. It had to be our top priority for the year. Even then, I don't think we understood how complex and difficult this endeavor would be or even just how important it would be to our intelligence efforts and to the war against terrorism. It is a monumental bill, and it redoes, for the first time in 30 years, proper handling of collection, which is why I am so pleased to stand before you today and say that we have succeeded.

The laborious process of consultation with Members of both bodies and both parties and legal and intelligence officials in the executive branch has worked. We have produced a strong, smart policy that will meet the needs of our intelligence community and protect America's cherished civil liberties.

For procedural reasons, the bill now before the Senate is a new bill which passed the House on Friday by a vote of 293 to 129. You can run that out to a 70-percent vote. While formally a new bill, it is the product of compromise between the FISA bills developed, debated, and amended in both Houses in the course of the past year.

In the absence of a formal conference, there is no conference report that describes this final bill. To help fill that void, I have prepared, as manager of the bill, a section-by-section analysis which builds on the analysis in our earlier Senate report and includes the changes that have followed. I hope it will be of assistance to the Senate in consideration of this final legislation as well as to the public and all those who will have responsibility to implement the bill.

Accordingly, I ask unanimous consent to have printed in the RECORD the summary of the bill's legislative history and a description of its four titles.

There being no objection, the material was ordered to be printed in the RECORD, as follows:

H.R. 6304, FISA AMENDMENTS ACT OF 2008

SECTION-BY-SECTION ANALYSIS AND EXPLANATION

Senator John D. Rockefeller IV, Chairman of the Select Committee on Intelligence

The consideration of legislation to amend the Foreign Intelligence Surveillance Act of 1978 (''FISA'') in the 110th Congress began with submission by the Director of National Intelligence (''DNI'') on April 12, 2007 of a proposed Foreign Intelligence Surveillance Modernization Act of 2007, as Title IV of the Administration's proposed Intelligence Authorization Act for Fiscal Year 2008. The DNI's proposal was the subject of an open hearing on May 1, 2007 and subsequent closed hearings by the Senate Select Committee on Intelligence, but was not formally introduced. It is available on the Committee's website: http://intelligence.senate.gov/070501/bill.pdf. In the Senate, the original legislative vehicle for the consideration of FISA amendments in the 110th Congress was S. 2248. It was reported by the Select Committee on Intelligence on October 26, 2007 (S. Rep. No. 110–209 (2007)), and then sequentially reported by the Committee on the Judiciary on November 16, 2007 (S. Rep. No. 110–258 (2008)). In the House, the original legislative vehicle was H.R. 3773. It was reported by the Committee on the Judiciary and the Permanent Select Committee on Intelligence on October 12, 2007 (H. Rep. No. 110–373 (Parts 1 and 2)(2007)). H.R. 3773 passed the House on November 15, 2007. S. 2248 passed the Senate on February 12, 2008, and was sent to the House as an amendment to H.R. 3773. On March 14, 2008, the House returned H.R. 3773 to the Senate with an amendment.

No formal conference was convened to resolve the differences between the two Houses on H.R. 3773. Instead, following an agreement reached without a formal conference, the House passed a new bill, H.R. 6304, which contains a complete compromise of the differences on H.R. 3773.

H.R. 6304 is a direct descendant of H.R. 3773, as well as of the original Senate bill, S. 2248, and the legislative history of those measures constitutes the legislative history of H.R. 6304. The section-by-section analysis and explanation set forth below is based on the analysis and explanation in the report of the Select Committee on Intelligence on S. 2248, at S. Rep. No. 110–209, pp. 12–25, as expanded and edited to reflect the floor amendments to S. 2248 and the negotiations that produced H.R. 6304.

OVERALL ORGANIZATION OF ACT

The FISA Amendments Act of 2008 (''FISA Amendments Act'') contains four titles.

Title I includes, in section 101, a new Title VII of FISA entitled ''Additional Procedures Regarding Certain Persons Outside the United States.'' This new title of FISA (which will sunset in four and a half years) is a successor to the Protect America Act of 2007, Pub. L. 110–55 (August 5, 2007) (''Protect America Act''), with amendments. Sections 102 through 110 of the Act contain a number of amendments to FISA apart from the collection issues addressed in the new Title VII of FISA. These include a provision reaffirming and strengthening the requirement that FISA is the exclusive means for electronic surveillance, important streamlining provisions, and a change in the definitions section of FISA (in section 110 of the bill) to facilitate foreign intelligence collection against proliferators of weapons of mass destruction.

Title II establishes a new Title VIII of FISA which is entitled ''Protection of Persons Assisting the Government.'' This new title establishes a long-term procedure, in new FISA section 802, for the Government to implement statutory defenses and obtain the dismissal of civil cases against persons, principally electronic communication service providers, who assist elements of the intelligence community in accordance with defined legal documents, namely, orders of the FISA Court or certifications or directives provided for and defined by statute. Section 802 also incorporates a procedure with precise boundaries for liability relief for electronic communication service providers who are defendants in civil cases involving an intelligence activity authorized by the President between September 11, 2001, and January 17, 2007. In addition, Title II provides for the protection, by way of preemption, of the federal government's ability to conduct intelligence activities without interference by state investigations.

Title III directs the Inspectors General of the Department of Justice, the Department of Defense, the Office of National Intelligence, the National Security Agency, and any other element of the intelligence community that participated in the President's Surveillance Program authorized by the President between September 11, 2001, and January 17, 2007, to conduct a comprehensive review of the program. The Inspectors General are required to submit a report to the appropriate committees of Congress, within one year, that addresses, among other things, all of the facts necessary to describe the establishment, implementation, product, and use of the product of the President's Surveillance Program, including the participation of individuals and entities in the private sector related to the program.

Title IV contains important procedures for the transition from the Protect America Act to the new Title VII of FISA. Section 404(a)(7) directs the Attorney General and the DNI, if they seek to replace an authorization under the Protect America Act, to

submit the certification and procedures required in accordance with the new section 702 to the FISA Court at least 30 days before the expiration of such authorizations, to the extent practicable. Title IV explicitly provides for the continued effect of orders, authorizations, and directives issued under the Protect America Act, and of the provisions pertaining to protection from liability, FISA court jurisdiction, the use of information acquired and Executive Branch reporting requirements, past the statutory sunset of that act. Title IV also contains provisions on the continuation of authorizations, directives, and orders under Title VII that are in effect at the time of the December 31, 2012 sunset, until their expiration within the year following the sunset.

TITLE I. FOREIGN INTELLIGENCE SURVEILLANCE

Section 101. Targeting the Communications of Persons Outside the United States

Section 101(a) of the FISA Amendments Act establishes a new Title VII of FISA. Entitled ''Additional Procedures Regarding Certain Persons Outside the United States,'' the new title includes, with important modifications, an authority similar to that granted by the Protect America Act as temporary sections 105A, 105B, and 105C of FISA. Those Protect America Act provisions had been placed within FISA's Title I on electronic surveillance. Moving the amended authority to a title of its own is appropriate because the authority involves not only the acquisition of communications as they are being carried but also while they are stored by electronic communication service providers.

Section 701. Definitions

Section 701 incorporates into Title VII the definition of nine terms that are defined in Title I of FISA and used in Title VII: ''agent of a foreign power,'' ''Attorney General,'' ''contents,'' ''electronic surveillance,'' ''foreign intelligence information,'' ''foreign power,'' ''person,'' ''United States,'' and ''United States person.'' It defines the congressional intelligence committees for the purposes of Title VII. Section 701 defines the two courts established in Title I that are assigned responsibilities under Title VII: the Foreign Intelligence Surveillance Court (''FISA Court'') and the Foreign Intelligence Surveillance Court of Review. Section 701 also defines ''intelligence community'' as found in the National Security Act of 1947. Finally, section 701 defines a term, not previously defined in FISA, which has an important role in setting the parameters of Title VII: ''electronic communication service provider.'' This definition is connected to the objective that the acquisition of foreign intelligence pursuant to this title is meant to encompass the acquisition of stored electronic communications and related data.

Section 702. Procedures for Targeting Certain Persons Outside the United States Other than United States Persons

Section 702(a) sets forth the basic authorization in Title VII, replacing section 105B of FISA, as added by the Protect America Act. Unlike the Protect America Act, the collection authority in section 702(a) is to be conducted pursuant to the issuance of an order of the FISA Court, or pursuant to a determination of the Attorney General and the DNI, acting jointly, that exigent circumstances exist, as defined in section 702(c)(2), subject to subsequent and expeditious action by the FISA Court. Authorizations must contain an effective date, and may be valid for a period of up to one year from that date.

Subsequent provisions of the Act implement the prior order and effective date provisions of section 702(a): in addition to section 702(c)(2) which defines exigent circumstances, section 702(i)(1)(B) provides that the court shall complete its review of certifications and procedures within 30 days (unless extended under section 702(j)(2)); section 702(i)(5)(A) provides for the submission of certifications and procedures to the FISA Court at least 30 days before the expiration of authorizations that are being replaced, to the extent practicable; and section 702(i)(5)(B) provides for the continued effectiveness of expiring certifications and procedures until the court issues an order concerning their replacements.

Section 105B and section 702(a) differ in other important respects. Section 105B authorized the acquisition of foreign intelligence information ''concerning'' persons reasonably believed to be outside the United States. To make clear that all collection under Title VII must be targeted at persons who are reasonably believed to be outside the United States, section 702(a) eliminates the word ''concerning'' and instead authorizes ''the targeting of persons reasonably believed to be located outside the United States to collect foreign intelligence information.''

Section 702(b) establishes five related limitations on the authorization in section 702(a). Overall, the limitations ensure that the new authority is not used for surveillance directed at persons within the United States or at United States persons. The first is a specific prohibition on using the new authority to target intentionally any person within the United States. The second provides that the authority may not be used to conduct ''reverse targeting,'' the intentional targeting of a person reasonably believed to be outside the United States if the purpose of the acquisition is to target a person reasonably believed to be in the United States. If the purpose of the acquisition is to target a person reasonably believed to be in the United States, the acquisition must be conducted in accordance with other titles of FISA. The third bars the intentional targeting of a United States person reasonably believed to be outside the United States. In order to target such United States person, acquisition must be conducted under three subsequent sections of Title VII, which require individual FISA court orders for United States persons: sections 703, 704, and 705. The fourth limitation goes beyond targeting (the object of the first three limitations) and prohibits the intentional acquisition of any communication as to which the sender and all intended recipients are known at the time of the acquisition to be located in the United States. The fifth is an overarching mandate that an acquisition authorized in section 702(a) shall be conducted in a manner consistent with the Fourth Amendment to the U.S. Constitution, which provides for ''the right of the people to be secure in their persons, houses, papers, and effects, against unreasonable searches and seizures.''

Section 702(c) governs the conduct of acquisitions. Pursuant to section 702(c)(1), acquisitions authorized under section 702(a) may be conducted only in accordance with targeting and minimization procedures approved at least annually by the FISA Court and a certification of the Attorney General and the DNI, upon its submission in accordance with section 702(g). Section 702(c)(2) describes the ''exigent circumstances'' in which the Attorney General and Director of National Intelligence may authorize targeting for a limited time without a prior court order for purposes of subsection (a). Section 702(c)(2) provides that the Attorney General and the DNI may make a determination that exigent circumstances exist because, without immediate implementation of an authorization under section 702(a), 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 an order pursuant to section 702(i)(3) prior to the implementation of such authorization. Section 702(c)(3) provides that the Attorney General and the DNI may make such a determination before the submission of a certification or by amending a certification at any time during which judicial review of such certification is pending before the FISA Court.

Section 702(c)(4) addresses the concern, reflected in section 105A of FISA as added by the Protect America Act, that the definition of electronic surveillance in Title I might prevent use of the new procedures. To address this concern, section 105A redefined the term ''electronic surveillance'' to exclude ''surveillance directed at a person reasonably believed to be located outside of the United States.'' This redefinition, however, broadly exempted activities from the limitations of FISA's individual order requirements. In contrast, section 702(c)(4) does not change the definition of electronic surveillance, but clarifies the intent of Congress to allow the targeting of foreign targets outside the United States in accordance with section 702 without an application for a court order under Title I of FISA. The addition of this construction paragraph, as well as the language in section 702(a) that an authorization may occur ''notwithstanding any other law,'' makes clear that nothing in Title I of FISA shall be construed to require a court order under that title for an acquisition that is targeted in accordance with section 702 at a foreign person outside the United States.

Section 702(d) provides, in a manner essentially identical to the Protect America Act, for the adoption by the Attorney General, in consultation with the DNI, of targeting procedures that are reasonably designed to ensure that collection is limited to targeting persons reasonably believed to be outside the United States. As provided in the Protect America Act, the targeting procedures are subject to judicial review and approval. In addition to the requirements of the Protect America Act, however, section 702(d) provides that the targeting procedures also must be reasonably designed to prevent the intentional acquisition of any communication as to which the sender and all intended recipients are known at the time of the acquisition to be located in the United States. Section 702(d)(2) subjects these targeting procedures to judicial review and approval.

Section 702(e) provides that the Attorney General, in consultation with the DNI, shall adopt, for acquisitions authorized by section 702(a), minimization procedures that are consistent with section 101(h) or 301(4) of FISA, which establish FISA's minimization requirements for electronic surveillance and physical searches. Section 702(e)(2) provides that the minimization procedures, which are essential to the protection of United States citizens and permanent residents, shall be subject to judicial review and approval. This corrects an omission in the Protect America Act which had not provided for judicial review of the adherence of minimization procedures to statutory requirements.

Section 702(f) provides that the Attorney General, in consultation with the DNI, shall adopt guidelines to ensure compliance with

the limitations in section 702(b), including the prohibitions on the acquisition of purely domestic communications, on targeting persons within the United States, on targeting United States persons located outside the United States, and on reverse targeting. Such guidelines shall also ensure that an application for a court order is filed as required by FISA. It is intended that these guidelines will be used for training intelligence community personnel so that there are clear requirements and procedures governing the appropriate implementation of the authority under this title of FISA. The Attorney General is to provide these guidelines to the congressional intelligence committees, the judiciary committees of the House of Representatives and the Senate, and the FISA Court. Subsequent provisions implement the guidelines requirement. See section 702(g)(2)(A)(iii)(certification requirements); section 702(l)(1) and 702(l)(2) (assessment of compliance with guidelines); and section 707(b)(1)(G)(ii) (reporting on noncompliance with guidelines).

Section 702(g) requires that the Attorney General and the DNI provide to the FISA Court, prior to implementation of an authorization under subsection (a), a written certification, with any supporting affidavits. In exigent circumstances, the Attorney General and DNI may make a determination that, without immediate implementation, intelligence important to the national security will be lost or not timely acquired prior to the implementation of an authorization. In exigent circumstances, if time does not permit the submission of a certification prior to the implementation of an authorization, the certification must be submitted to the FISA Court no later than seven days after the determination is made. This seven-day time period for submission of a certification in the case of exigent circumstances is identical to the time period by which the Attorney General must apply for a court order after authorizing an emergency surveillance under other provisions of FISA, as amended by this Act.

Section 702(g)(2) sets forth the requirements that must be contained in the written certification. These elements include: that the targeting and minimization procedures have been approved by the FISA Court or will be submitted to the court with the certification; that guidelines have been adopted to ensure compliance with the limitations of subsection (b) have been adopted; that those procedures and guidelines are consistent with the Fourth Amendment; that the acquisition is targeted at persons reasonably believed to be outside the United States; that a significant purpose of the acquisition is to obtain foreign intelligence information; and an effective date for the authorization that in most cases is at least 30 days after the submission of the written certification. Additionally, as an overall limitation on the method of acquisition. permitted under section 702, the certification must attest that the acquisition involves obtaining foreign intelligence information from or with the assistance of an electronic communication service provider.

Requiring an effective date in the certification serves to identify the beginning of the period of authorization (which is likely to be a year) for collection and to alert the FISA Court of when the Attorney General and DNI are seeking to begin collection. Section 702(g)(3) permits the Attorney General and DNI to change the effective date in the certification by amending the certification.

As with the Protect America Act, the certification under section 702(g)(4) is not required to identify the specific facilities, places, premises, or property at which the acquisition under section 702(a) will be directed or conducted. The certification shall be subject to review by the FISA Court.

Section 702(h) authorizes the Attorney General and the DNI to direct, in writing, an electronic communication service provider to furnish the Government with all information, facilities, or assistance necessary to accomplish the acquisition authorized under subsection 702(a). It requires compensation for this assistance and provides that no cause of action shall lie in any court against an electronic communication service provider for its assistance in accordance with a directive. Section 702(h) also establishes expedited procedures in the FISA Court for a provider to challenge the legality of a directive or the Government to enforce it. In either case, the question for the court is whether the directive meets the requirements of section 702 and is otherwise lawful. Whether the proceeding begins as a provider challenge or a Government enforcement petition, if the court upholds the directive as issued or modified, the court shall order the provider to comply. Failure to comply may be punished as a contempt of court. The proceedings shall be expedited and decided within 30 days, unless that time is extended under section 702(j)(2).

Section 702(i) provides for judicial review of any certification required by section 702(g) and the targeting and minimization procedures adopted pursuant to sections 702(d) and 702(e). In accordance with section 702(i)(5), if the Attorney General and the DNI seek to reauthorize or replace an authorization in effect under the Act, they shall submit, to the extent practicable, the certification and procedures at least 30 days prior to the expiration of such authorization.

The court shall review certifications to determine whether they contain all the required elements. It shall review targeting procedures to assess whether they are reasonably designed to ensure that the acquisition activity is limited to the targeting of persons reasonably believed to be located outside the United States and prevent the intentional acquisition of any communication whose sender and intended recipients are known to be located in the United States. The Protect America Act had limited the review of targeting procedures to a ''clearly erroneous'' standard; section 702(i) omits that limitation. For minimization procedures, section 702(i) provides that the court shall review them to assess whether they meet the statutory requirements. The court is to review the certifications and procedures and issue its order within 30 days after they were submitted unless that time is extended under section 702(j)(2). The Attorney General and the DNI may also amend the certification or procedures at any time under section 702(i)(1)(C), but those amended certifications or procedures must be submitted to the court in no more than 7 days after amendment. The amended procedures may be used pending the court's review.

If the FISA Court finds that the certification contains all the required elements and that the targeting and minimization procedures are consistent with the requirements of subsections (d) and (e) and with the Fourth Amendment, the court shall enter an order approving their use or continued use for the acquisition authorized by section 702(a). If it does not so find, the court shall order the Government, at its election, to correct any deficiencies or cease, or not begin, the acquisition. If acquisitions have begun, they may continue during any rehearing en banc of an order requiring the correction of deficiencies. If the Government appeals to the Foreign Intelligence Surveillance Court of Review, any collection that has begun may continue at least until that court enters an order, not later than 60 days after filing of the petition for review, which determines whether all or any part of the correction order shall be implemented during the appeal

Section 702(j)(1) provides that judicial proceedings are to be conducted as expeditiously as possible. Section 702(j)(2) provides that the time limits for judicial review in section 702 (for judicial review of certifications and procedures or in challenges or enforcement proceedings concerning directives) shall apply unless extended, by written order, as necessary for good cause in a manner consistent with national security.

Section 702(k) requires that records of proceedings under section 702 shall be maintained by the FISA Court under security measures adopted by the Chief Justice in consultation with the Attorney General and the DNI. In addition, all petitions are to be filed under seal and the FISA Court, upon the request of the Government, shall consider ex parte and in camera any Government submission or portions of a submission that may include classified information. The Attorney General and the DNI are to retain directives made or orders granted for not less than 10 years.

Section 702(l) provides for oversight of the implementation of Title VII. It has three parts. First, the Attorney General and the DNI shall assess semiannually under subsection (l)(1) compliance with the targeting and minimization procedures, and the Attorney General guidelines for compliance with limitations under section 702(b), and submit the assessment to the FISA Court and to the congressional intelligence and judiciary committees, consistent with congressional rules.

Second, under subsection (l)(2)(A), the Inspector General of the Department of Justice and the inspector general (''IG'') of any intelligence community element authorized to acquire foreign intelligence under section 702(a) are authorized to review compliance of their agency or element with the targeting and minimization procedures adopted in accordance with subsections (d) and (e) and the guidelines adopted in accordance with subsection (f). Subsections (l)(2)(B) and (l)(2)(C) mandate several statistics that the IGs shall review with respect to United States persons, including the number of disseminated intelligence reports that contain references to particular U.S. persons, the number of U.S. persons whose identities were disseminated in response to particular requests, and the number of targets later determined to be located in the United States. Their reports shall be submitted to the Attorney General, the DNI, and the appropriate congressional committees. Section 702(l)(2) provides no statutory schedule for the completion of these IG reviews; the IGs should coordinate with the heads of their agencies about the timing for completion of the IG reviews so that they are done at a time that would be useful for the agency heads to complete their semiannual reviews.

Third, under subsection (l)(3), the head of an intelligence community element that conducts an acquisition under section 702 shall review annually whether there is reason to believe that foreign intelligence information has been or will be obtained from the acquisition and provide an accounting of information pertaining to United States persons similar to that included in the IG report. Subsection (l)(3) also encourages the

head of the element to develop procedures to assess the extent to which the new authority acquires the communications of U.S. persons, and to report the results of such assessment. The review is to be used by the head of the element to evaluate the adequacy of minimization procedures. The annual review is to be submitted to the FISA Court, the Attorney General and the DNI, and to the appropriate congressional committees.

Section 703. Certain Acquisition Inside the United States Targeting United States Persons Outside the United States

Section 703 governs the targeting of United States persons who are reasonably believed to be outside the United States when the acquisition of foreign intelligence is conducted inside the United States. The authority and procedures of section 703 apply when the acquisition either constitutes electronic surveillance, as defined in Title I of FISA, or is of stored electronic communications or stored electronic data. If the United States person returns to the United States, acquisition under section 703 must cease. The Government may always, however, obtain an order or authorization under another title of FISA.

The application procedures and provisions for a FISA Court order in sections 703(b) and 703(c) are drawn from Titles I and III of FISA. Key among them is the requirement that the FISA Court determine that there is probable cause to believe that, for the United States person who is the target of the surveillance, the person is reasonably believed to be located outside the United States and is a foreign power or an agent, officer or employee of a foreign power. The inclusion of United States persons who are officers or employees of a foreign power, as well as those who are agents of a foreign power as that term is used in FISA, is intended to permit the type of collection against United States persons outside the United States that has been allowed under existing Executive Branch guidelines. The FISA Court shall also review and approve minimization procedures that will be applicable to the acquisition, and shall order compliance with such procedures.

As with FISA orders against persons in the United States, FISA orders against United States persons outside of the United States under section 703 may not exceed 90 days and may be renewed for additional 90–day periods upon the submission of renewal applications. Emergency authorizations under section 703 are consistent with the requirements for emergency authorizations in FISA against persons in the United States, as amended by this Act; the Attorney General may authorize an emergency acquisition if an application is submitted to the FISA Court in not more than seven days.

Section 703(g) is a construction provision that clarifies that, if the Government obtains an order and target a particular United States person in accordance with section 703, FISA does not require the Government to seek a court order under any other provision of FISA to target that United States person while that person is reasonably believed to be located outside the United States.

Section 704. Other Acquisitions Targeting United States Persons Outside the United States

Section 704 governs other acquisitions that target United States persons who are outside the United States. Sections 702 and 703 address acquisitions that constitute electronic surveillance or the acquisition of stored electronic communications. In contrast, as provided in section 704(a)(2), section 704 addresses any targeting of a United States person outside of the United States under circumstances in which that person has a reasonable expectation of privacy and a warrant would be required if the acquisition occurred within the United States. It thus covers not only communications intelligence, but, if it were to occur, the physical search of a home, office, or business of a United States person by an element of the United States intelligence community, outside of the United States.

Pursuant to section 704(a)(3), if the targeted United States person is reasonably believed to be in the United States while an order under section 704 is in effect, the acquisition against that person shall cease unless authority is obtained under another applicable provision of FISA. Likewise, the Government may not use section 704 to authorize an acquisition of foreign intelligence inside the United States.

Section 704(b) describes the application to the FISA Court that is required. For an order under section 704(c), the FISA Court must determine that there is probable cause to believe that the United States person who is the target of the acquisition is reasonably believed to be located outside the United States and is a foreign power, or an agent, officer or employee of a foreign power. An order is valid for a period not to exceed 90 days, and may be renewed for additional 90-day periods upon submission of renewal applications meeting application requirements.

Because an acquisition under section 704 is conducted outside the United States, or is otherwise not covered by FISA, the FISA Court is expressly not given jurisdiction to review the means by which an acquisition under this section may be conducted. Although the FISA Court's review is limited to determinations of probable cause, section 704 anticipates that any acquisition conducted pursuant to a section 704 order will in all other respects be conducted in compliance with relevant regulations and Executive Orders governing the acquisition of foreign intelligence outside the United States, including Executive Order 12333 or any successor order.

Section 705. Joint Applications and Concurrent Authorizations

Section 705 provides that if an acquisition targeting a United States person under section 703 or 704 is proposed to be conducted both inside and outside the United States, a judge of the FISA Court may issue simultaneously, upon the request of the Government in a joint application meeting the requirements of sections 703 and 704, orders under both sections as appropriate. If an order authorizing electronic surveillance or physical search has been obtained under section 105 or section 304, and that order is still in effect, the Attorney General may authorize, without an order under section 703 or 704, the targeting of that United States person for the purpose of acquiring foreign intelligence information while such person is reasonably believed to be located outside the United States.

Section 706. Use of Information Acquired Under Title VII

Section 706 fills a void that has existed under the Protect America Act which had contained no provision governing the use of acquired intelligence. Section 706(a) provides that information acquired from an acquisition conducted under section 702 shall be deemed to be information acquired from an electronic surveillance pursuant to Title I of FISA for the purposes of section 106 of FISA, which is the provision of Title I of FISA that governs public disclosure or use in criminal proceedings. The one exception is for subsection (j) of section 106, as the notice provision in that subsection, while manageable in individual Title I proceedings, would present a difficult national security question when applied to a Title VII acquisition. Section 706(b) also provides that information acquired from an acquisition conducted under section 703 shall be deemed to be information acquired from an electronic surveillance pursuant to Title I of FISA for the purposes of section 106 of FISA; however, the notice provision of subsection (j) applies. Section 706 ensures that a uniform standard for the types of information is acquired under the new title.

Section 707. Congressional Oversight

Section 707 provides for additional congressional oversight of the implementation of Title VII. The Attorney General is to fully inform ''in a manner consistent with national security'' the congressional intelligence and judiciary committees about implementation of the Act at least semiannually. Each report is to include any certifications made under section 702, the reasons for any determinations made under section 702(c)(2), any directives issued during the reporting period, a description of the judicial review during the reporting period to include a copy of any order or pleading that contains a significant legal interpretation of section 702, incidents of noncompliance and procedures to implement the section. With respect to sections 703 and 704, the report must contain the number of applications made for orders under each section and the number of such orders granted, modified and denied, as well as the number of emergency authorizations made pursuant to each section and the subsequent orders approving or denying the relevant application. In keeping the congressional intelligence committees fully informed, the Attorney General should provide no less information than has been provided in the past in keeping the committees fully and currently informed.

Section 708. Savings Provision

Section 708 provides that nothing in Title VII shall be construed to limit the authority of the Government to seek an order or authorization under, or otherwise engage in any activity that is authorized under, any other title of FISA. This language is designed to ensure that Title VII cannot be interpreted to prevent the Government from submitting applications and seeking orders under other titles of FISA.

Section 101(b). Table of Contents

Section 101(b) of the bill amends the table of contents in the first section of FISA.

Subsection 101(c). Technical and Conforming Amendments

Section 101(c) of the bill provides for technical and conforming amendments in Title 18 of the United States Code and in FISA.

Section 102. Statement of Exclusive Means by which Electronic Surveillance and Interception of Certain Communications May Be Conducted

Section 102(a) amends Title I of FISA by adding a new Section 112 of FISA. Under the heading of ''Statement of Exclusive Means by which Electronic Surveillance and Interception of Certain Communications May Be Conducted,'' the new section 112(a) states: ''Except as provided in subsection (b), the procedures of chapters 119, 121 and 126 of Title 18, United States Code, and this Act shall be the exclusive means by which electronic surveillance and the interception of domestic wire, oral, or electronic communication may be conducted.'' New section 112(b) of FISA provides that only an express statutory authorization for electronic surveillance or the interception of domestic wire, oral, or electronic communications, other than as an amendment to FISA or chapters 119, 121, or 206 of Title 18 shall constitute an additional exclusive means for the

purpose of subsection (a). The new section 112 is based on a provision which Congress enacted in 1978 as part of the original FISA that is codified in section 2511(2)(f) of Title 18, United States Code, and which will remain in the U.S. Code.

Section 102(a) strengthens the statutory provisions pertaining to electronic surveillance and interception of certain communications to clarify the express intent of Congress that these statutory provisions are the exclusive means for conducting electronic surveillance and interception of certain communications. With the absence of reference to the Authorization for Use of Military Force, Pub. L. 107–40, (September 18, 2001) (''AUMF''), Congress makes clear that this AUMF or any other existing statute cannot be used in the future as the statutory basis for circumventing FISA. Section 102(a) is intended to ensure that additional exclusive means for surveillance or interceptions shall be express statutory authorizations.

In accord with section 102(b) of the bill, section 109 of FISA that provides for criminal penalties for violations of FISA, is amended to implement the exclusivity requirement added in section 112 by making clear that the safe harbor to FISA's criminal offense provision is limited to statutory authorizations for electronic surveillance or the interception of domestic wire, oral, or electronic communications which are pursuant to a provision of FISA, one of the enumerated chapters of the criminal code, or a statutory authorization that expressly provides an additional exclusive means for conducting the electronic surveillance. By virtue of the cross-reference in section 110 of FISA to section 109, that limitation on the safe harbor in section 109 applies equally to section 110 on civil liability for conducting unlawful electronic surveillance.

Section 102(c) requires that when a certification for assistance to obtain foreign intelligence is based on statutory authority, the certification provided to an electronic communication service provider is to include the specific statutory authorization for the request for assistance and certify that the statutory requirements have been met. This provision is designed to assist electronic communication service providers in understanding the legal basis for any government requests for assistance.

In the section-by-section analysis of S. 2248, the report of the Select Committee on Intelligence (S. Rep. No. 110–209, at 18) described and incorporated the discussion of exclusivity in the 1978 conference report on the original Foreign Intelligence Surveillance Act, in particular the conferees' description of the Youngstown Sheet and Tube Co. v. Sawyer, 343 U.S. 579, 637 (1952) and the application of the principles described there to the current legislation. That full discussion should be deemed incorporated in this section-by-section analysis.

Section 103. Submittal to Congress of Certain Court Orders under the Foreign Intelligence Surveillance Act of 1978

Section 6002 of the Intelligence Reform Act and Terrorism Prevention Act of 2004 (Pub. L. 108–458), added a Title VI to FISA that augments the semiannual reporting obligations of the Attorney General to the intelligence and judiciary committees of the Senate and House of Representatives. Under section 6002, the Attorney General shall report a summary of significant legal interpretations of FISA in matters before the FISA Court or Foreign Intelligence Surveillance Court of Review. The requirement extends to interpretations presented in applications or pleadings filed with either court by the Department of Justice. In addition to the semiannual summary, the Department of Justice is required to provide copies of court decisions, but not orders, which include significant interpretations of FISA. The importance of the reporting requirement is that, because the two courts conduct their business in secret, Congress needs the reports to know how the law it has enacted is being interpreted.

Section 103 improves the Title VI reporting requirements in three ways. First, as significant legal interpretations may be included in orders as well as opinions, section 103 requires that orders also be provided to the committees. Second, as the semiannual report often takes many months after the end of the semiannual period to prepare, section 103 accelerates provision of information about significant legal interpretations by requiring the submission of such decisions, orders, or opinions within 45 days. Finally, section 103 requires that the Attorney General shall submit a copy of any such decision, order, or opinion, and any pleadings, applications, or memoranda of law associated with such decision, order, or opinion, from the period five years preceding enactment of the bill that has not previously been submitted to the congressional intelligence and judiciary committees.

OVERVIEW OF SECTIONS 104 THROUGH SECTION 109. FISA STREAMLINING

Sections 104 through 109 amend various sections of FISA for such purposes as reducing a paperwork requirement, modifying time requirements, or providing additional flexibility in terms of the range of Government officials who may authorize FISA actions. Collectively, these amendments are described as streamlining amendments. In general, they are intended to increase the efficiency of the FISA process without depriving the FISA Court of the information it needs to make findings required under FISA.

Section 104. Applications for Court Orders

Section 104 of the bill strikes two of the eleven paragraphs on standard information in an application for a surveillance order under section 104 of FISA, either because the information is provided elsewhere in the application process or is not needed.

In various places, FISA has required the submission of ''detailed'' information, as in section 104 of FISA, ''a detailed description of the nature of the information sought and the type of communications or activities to be subjected to the surveillance.'' The DNI requested legislation that asked that ''summary'' be substituted for ''detailed'' for this and other application requirements, in order to reduce the length of FISA applications. In general, the bill approaches this by eliminating the mandate for ''detailed'' descriptions, leaving it to the FISA Court and the Government to work out the level of specificity needed by the FISA Court to perform its statutory responsibilities. With respect to one item of information, ''a statement of the means by which the surveillance will be effected,'' the bill modifies the requirement by allowing for ''a summary statement.''

In aid of flexibility, section 104 increases the number of individuals who may make FISA applications by allowing the President to designate the Deputy Director of the Federal Bureau of Investigation (''FBI'') as one of those individuals. This should enable the Government to move more expeditiously to obtain certifications when the Director of the FBI is away from Washington or otherwise unavailable.

Subsection (b) of section 104 of FISA is eliminated as obsolete in light of current applications. The Director of the Central Intelligence Agency is added to the list of officials who may make a written request to the Attorney General to personally review a FISA application as the head of the CIA had this authority prior to the establishment of the Office of the Director of National Intelligence.

Section 105. Issuance of an Order

Section 105 strikes from Section 105 of FISA several unnecessary or obsolete provisions. Section 105 strikes subsection (c)(1)(F) of Section 105 of FISA which requires minimization procedures applicable to each surveillance device employed because Section 105(c)(2)(A) requires each order approving electronic surveillance to direct the minimization procedures to be followed.

Subsection (a)(6) reorganizes, in more readable form, the emergency surveillance provision of section 105(f), now redesignated section 105(e), with a substantive change of extending from 3 to 7 days the time by which the Attorney General must apply for and obtain a court order after authorizing an emergency surveillance. The purpose of the change is to help make emergency authority a more practical tool while keeping it within the parameters of FISA.

Subsection (a)(7) adds a new paragraph to section 105 of FISA to require the FISA Court, on the Government's request, when granting an application for electronic surveillance, to authorize at the same time the installation and use of pen registers and trap and trace devices. This will save the paperwork that had been involved in making two applications.

Section 106. Use of Information

Section 106 amends section 106(i) of FISA with regard to the limitations on the use of unintentionally acquired information. Currently, section 106(i) of FISA provides that unintentionally acquired radio communication between persons located in the United States must be destroyed unless the Attorney General determines that the contents of the communications indicates a threat of death or serious bodily harm to any person. Section 106 of the bill amends subsection 106(i) of FISA by making it technology neutral on the principle that the same rule for the use of information indicating threats of death or serious harm should apply no matter how the communication is transmitted.

Section 107. Amendments for Physical Searches

Section 107 makes changes to Title III of FISA: changing applications and orders for physical searches to correspond to changes in sections 104 and 105 on reduction of some application paperwork; providing the FBI with administrative flexibility in enabling its Deputy Director to be a certifying officer; and extending the time, from 3 days to 7 days, for applying for and obtaining a court order after authorization of an emergency search.

Section 303(a)(4)(C), which will be redesignated section 303(a)(3)(C), requires that each application for physical search authority state the applicant's belief that the property is ''owned, used, possessed by, or is in transmit to or from'' a foreign power or an agent of a foreign power. In order to provide needed flexibility and to make the provision consistent with electronic surveillance provisions, section 107(a)(1)(D) of the bill allows the FBI to apply for authority to search property that also is ''about to be'' owned, used, or possessed by a foreign power or agent of a foreign power, or in transit to or from one.

Section 108. Amendments for Emergency Pen Registers and Trap and Trace Devices

Section 108 amends section 403 of FISA to extend from 2 days to 7 days the time for applying for and obtaining a court order after an emergency installation of a pen register or trap and trace device. This change harmonizes among FISA's provisions for electronic surveillance, search, and pen register/

trap and trace authority the time requirements that follow the Attorney General's decision to take emergency action.

Section 109. Foreign Intelligence Surveillance Court

Section 109 contains four amendments to section 103 of FISA, which establishes the FISA Court and the Foreign Intelligence Surveillance Court of Review.

Section 109(a) amends section 103 to provide that judges on the FISA Court shall be drawn from ''at least seven'' of the United States judicial circuits. The current requirement—that the eleven judges be drawn from seven judicial circuits (with the number appearing to be a ceiling rather than a floor) has proven unnecessarily restrictive or complicated for the designation of the judges to the FISA Court.

Section 109(b) amends section 103 to allow the FISA Court to hold a hearing or rehearing of a matter en banc, which is by all the judges who constitute the FISA Court sitting together. The Court may determine to do this on its own initiative, at the request of the Government in any proceeding under FISA, or at the request of a party in the few proceedings in which a private entity or person may be a party, i.e., challenges to document production orders under Title V, or proceedings on the legality or enforcement of directives to electronic communication service providers under Title VII.

Under section 109(b), en banc review may be ordered by a majority of the judges who constitute the FISA Court upon a determination that it is necessary to secure or maintain uniformity of the court's decisions or that a particular proceeding involves a question of exceptional importance. En banc proceedings should be rare and in the interest of the general objective of fostering expeditious consideration of matters before the FISA Court.

Section 109(c) provides authority for the entry of stays, or the entry of orders modifying orders entered by the FISA Court or the Foreign Intelligence Surveillance Court of Review, pending appeal or review in the Supreme Court. This authority is supplemental to, and does not supersede, the specific provision in section 702(i)(4)(B) that acquisitions under Title VII may continue during the pendency of any rehearing en banc and appeal to the Court of Review subject to the requirement for a determination within 60 days under section 702(i)(4)(C).

Section 109(d) provides that nothing in FISA shall be construed to reduce or contravene the inherent authority of the FISA Court to determine or enforce compliance with any order of that court or with a procedure approved by it.

Section 110. Weapons of Mass Destruction

Section 110 amends the definitions in FISA of foreign power and agent of a foreign power to include individuals who are not United States persons and entities not substantially composed of United States persons that are engaged in the international proliferation of weapons of mass destruction. Section 110 also adds a definition of weapon of mass destruction to the Act that defines weapons of mass destruction to cover explosive, incendiary, or poison gas devices that are designed, intended to, or have the capability to cause a mass casualty incident or death, and biological, chemical and nuclear weapons that are designed, intended to, or have the capability to cause illness or serious bodily injury to a significant number of persons. Section 110 also makes corresponding, technical and conforming changes to FISA.

TITLE II. PROTECTIONS FOR ELECTRONIC COMMUNICATION SERVICE PROVIDERS

This title establishes a new Title VIII of FISA. The title addresses liability relief for electronic communication service providers who have been alleged in various civil actions to have assisted the U.S. Government between September 11, 2001, and January 17, 2007, when the Attorney General announced the termination of the Terrorist Surveillance Program. In addition, Title VIII contains provisions of law intended to implement statutory defenses for electronic communication service providers and others who assist the Government in accordance with precise, existing legal requirements, and for providing for federal preemption of state investigations. The liability protection provisions of Title VIII are not subject to sunset.

Section 801. Definitions

Section 801 establishes definitions for Title VIII. Several are of particular importance.

The term ''assistance'' is defined to mean the provision of, or the provision of access to, information, facilities, or another form of assistance. The word ''information'' is itself described in a parenthetical to include communication contents, communication records, or other information relating to a customer or communications. ''Contents'' is defined by reference to its meaning in Title I of FISA. By that reference, it includes any information concerning the identity of the parties to a communication or the existence, substance, purport, or meaning of it.

The term ''civil action'' is defined to include a ''covered civil action.'' Thus, ''covered civil actions'' are a subset of civil actions, and everything in new Title VIII that is applicable generally to civil actions is also applicable to ''covered civil actions.'' A ''covered civil action'' has two key elements. It is defined as a civil action filed in a federal or state court which (1) alleges that an electronic communication service provider (a defined term) furnished assistance to an element of the intelligence community and (2) seeks monetary or other relief from the electronic communication service provider related to the provision of the assistance. Both elements must be present for the lawsuit to be a covered civil action.

The term ''person'' (the full universe of those protected by section 802) is necessarily broader than the definition of electronic communication service provider. The aspects of Title VIII that apply to those who assist the Government in accordance with precise, existing legal requirements apply to all who may be ordered to provide assistance under FISA, such as custodians of records who may be directed to produce records by the FISA Court under Title V of FISA or landlords who may be required to provide access under Title I or III of FISA, not just to electronic communication service providers.

Section 802. Procedures for Implementing Statutory Defenses

Section 802 establishes procedures for implementing statutory defenses. Notwithstanding any other provision of law, no civil action may lie or be maintained in a federal or state court against any person for providing assistance to an element of the intelligence community, and shall be promptly dismissed, if the Attorney General makes a certification to the district court in which the action is pending. (If an action had been commenced in state court, it would have to be removed, pursuant to section 802(g) to a district court, where a certification under section 802 could be filed.) The certification must state either that the assistance was not provided (section 802(a)(5)) or, if furnished, that it was provided pursuant to specific statutory requirements (sections 802(a)(1–4)). Three of these underlying requirements, which are specifically described in section 802 (sections 802(a)(1–3)), come from existing law. They include: an order of the FISA Court directing assistance, a certification in writing under sections 2511(2)(a)(ii)(B) or 2709(b) of Title 18, or directives to electronic communication service providers under particular sections of FISA or the Protect America Act.

The Attorney General may only make a certification under the fourth statutory requirement, section 802(a)(4), if the civil action is a covered civil action (as defined in section 801(5)). To satisfy the requirements of section 802(a)(4), the Attorney General must certify first that the assistance alleged to have been provided by the electronic communication service provider was in connection with an intelligence activity involving communications that was (1) authorized by the President between September 11, 2001 and January 17, 2007 and (2) designed to detect or prevent a terrorist attack or preparations for one against the United States. In addition, the Attorney General must also certify that the assistance was the subject of a written request or directive, or a series of written requests or directives, from the Attorney General or the head (or deputy to the head) of an element of the intelligence community to the electronic communication service provider indicating that the activity was (1) authorized by the President and (2) determined to be lawful. The report of the Select Committee on Intelligence contained a description of the relevant correspondence provided to electronic communication service providers (S. Rep. No. 110–209, at 9).

The district court must give effect to the Attorney General's certification unless the court finds it is not supported by substantial evidence provided to the court pursuant to this section. In its review, the court may examine any relevant court order, certification, written request or directive submitted by the Attorney General pursuant to subsection (b)(2) or by the parties pursuant to subsection (d). Section 802 is silent on the nature of any additional materials that the Attorney General may submit beyond those listed in subsection (b)(2) if the Attorney General determines they are necessary to provide substantial evidence to support the certification, such as if the Attorney General certifies that a person did not provide the alleged assistance.

If the Attorney General files a declaration that disclosure of a certification or supplemental materials would harm national security, the court shall review the certification and supplemental materials in camera and ex parte, which means with only the Government present. A public order following that review shall be limited to a statement as to whether the case is dismissed and a description of the legal standards that govern the order, without disclosing the basis for the certification of the Attorney General. The purpose of this requirement is to protect the classified national security information involved in the identification of providers who assist the Government. A public order shall not disclose whether the certification was based on an order, certification, or directive, or on the ground that the electronic communication service provider furnished no assistance. Because the district court must find that the certification—including a certification that states that a party did not provide the alleged assistance—is supported by substantial evidence in order to dismiss a case, an order failing to dismiss a case is only a conclusion that the substantial evidence test has not been met. It does not indicate whether a particular provider assisted the government.

Subsection (d) makes clear that any plaintiff or defendant in a civil action may submit any relevant court order, certification, written request, or directive to the district court for review and be permitted to participate in the briefing or argument of any legal

issue in a judicial proceeding conducted pursuant to this section, to the extent that such participation does not require the disclosure of classified information to such party. The authorities of the Attorney General under section 802 are to be performed only by the Attorney General, the Acting Attorney General, or the Deputy Attorney General.

In adopting the portions of section 802 that allow for liability protection for those electronic communication service providers who may have participated in the program of intelligence activity involving communications authorized by the President between September 11, 2001, and January 17, 2007, the Congress makes no statement on the legality of the program. This is in accord with the statement in the report of the Senate Intelligence Committee that ''Section 202 [as the immunity provision was then numbered] makes no assessment about the legality of the President's program.'' S. Rep. No. 110–209, at 9.

Section 803. Preemption of State Investigations

Section 803 addresses actions taken by a number of state regulatory commissions to force disclosure of information concerning cooperation by state regulated electronic communication service providers with U.S. intelligence agencies. Section 803 preempts these state actions and authorizes the United States to bring suit to enforce the prohibition.

Section 804. Reporting

Section 804 provides for oversight of the implementation of Title VIII. On a semi-annual basis, the Attorney General is to provide to the appropriate congressional committees a report on any certifications made under section 802, a description of the judicial review of the certifications made under section 802, and any actions taken to enforce the provisions of section 803.

Section 202. Technical Amendments

Section 202 amends the table of contents of the first section of FISA.

TITLE III. REVIEW OF PREVIOUS ACTIONS

Title III directs the Inspectors General of the Department of Justice, the Office of the Director of National Intelligence, the Department of Defense, the National Security Agency, and any other element of the intelligence community that participated in the President's surveillance program, defined in the title to mean the intelligence activity involving communications that was authorized by the President during the period beginning on September 11, 2001, and ending on January 17, 2007, to complete a comprehensive review of the program with respect to the oversight authority and responsibility of each such inspector general.

The review is to include: all of the facts necessary to describe the establishment, implementation, product, and use of the product of the program; access to legal reviews of the program and information about the program; communications with, and participation of, individuals and entities in the private sector related to the program; interaction with the FISA Court and transition to court orders related to the program; and any other matters identified by any such inspector general that would enable that inspector general complete a review of the program with respect to the inspector general's department or element.

The inspectors general are directed to work in conjunction, to the extent practicable, with other inspectors general required to conduct a review, and not unnecessarily duplicate or delay any reviews or audits that have already been completed or are being undertaken with respect to the program. In addition, the Counsel of the Office of Professional Responsibility of the Department of Justice is directed to provide the report of any investigation of that office relating to the program, including any investigation of the process through which the legal reviews of the program were conducted and the substance of such reviews, to the Inspector General of the Department of Justice, who shall integrate the factual findings and conclusions of such investigation into its review.

The inspectors general shall designate one of the Senate confirmed inspectors general required to conduct a review to coordinate the conduct of the reviews and the preparation of the reports. The inspectors general are to submit an interim report within sixty days to the appropriate congressional committees on their planned scope of review. The final report is to be completed no later than one year after enactment and shall be submitted in unclassified form, but may include a classified annex.

The Congress is aware that the Inspector General of the Department of Justice has undertaken a review of the program. This review should serve as a significant part of the basis for meeting the requirements of this title. In no event is this title intended to delay or duplicate the investigation completed to date or the issuance of any report by the Inspector General of the Department of Justice.

TITLE IV. OTHER PROVISIONS

Section 401. Severability

Section 401 provides that if any provision of this bill or its application is held invalid, the validity of the remainder of the Act and its application to other persons or circumstances is unaffected.

Section 402. Effective Date

Section 402 provides that except as provided in the transition procedures (section 404 of the title), the amendments made by the bill shall take effect immediately.

Section 403. Repeals

Section 403(a) provides for the repeal of those sections of FISA enacted as amendments to FISA by the Protect America Act, except as provided otherwise in the transition procedures of section 404, and makes technical and conforming amendments.

Section 403(b) provides for the sunset of the FISA Amendments Act on December 31, 2012, except as provided in section 404 of the bill. This date ensures that the amendments by the Act will be reviewed during the next presidential administration. The subsection also makes technical and conforming amendments.

Section 404. Transition Procedures

Section 404 establishes transition procedures for the Protect America Act and the Foreign Intelligence Surveillance Act Amendments of 2008.

Subsection (a)(1) continues in effect orders, authorizations, and directives issued under FISA, as amended by section 2 of the Protect America Act, until the expiration of such order, authorization or directive.

Subsection (a)(2) sets forth the provisions of FISA and the Protect America Act that continue to apply to any acquisition conducted under such Protect America Act order, authorization or directive. In addition, subsection (a) clarifies the following provisions of the Protect America Act: the protection from liability provision of subsection (l) of Section 105B of FISA as added by section 2 of the Protect America Act; jurisdiction of the FISA Court with respect to a directive issued pursuant to the Protect America Act, and the Protect America Act reporting requirements of the Attorney General and the DNI. Subsection (a) is made effective as of the date of enactment of the Protect America Act (August 5, 2007). The purpose of these clarifications and the effective date for them is to ensure that there are no gaps in the legal protections contained in that act, including for authorized collection following the sunset of the Protect America Act, notwithstanding that its sunset provision was only extended once until February 16, 2008. Additionally, subsection (a)(3) fills a void in the Protect America Act and applies the use provisions of section 106 of FISA to collection under the Protect America Act, in the same manner that section 706 does for collection under Title VII.

In addition, subsection (a)(7) makes clear that if the Attorney General and the DNI seek to replace an authorization made pursuant to the Protect America Act with an authorization made under section 702, as added by this bill, they are, to the extent practicable, to submit a certification to the FISA Court at least 30 days in advance of the expiration of such authorization. The authorizations, and any directives issued pursuant to the authorization, are to remain in effect until the FISA Court issues an order with respect to that certification.

Subsection (b) provides similar treatment for any order of the FISA Court issued under Title VII of this bill in effect on December 31, 2012.

Subsection (c) provides transition procedures for the authorizations in effect under section 2.5 of Executive Order 12333. Those authorizations shall continue in effect until the earlier of the date that authorization expires or the date that is 90 days after the enactment of this Act. This transition provision is particularly applicable to the transition to FISA Court orders that will occur as a result of sections 703 and 704 of FISA, as added by this bill.

Mr. ROCKEFELLER. Before laying out where this bill improves upon the Senate-passed bill—and it does—let me first restate how proud I am of our efforts in February that laid the foundation for the final action we will soon take. Our Senate bill established the framework for a judicial review of the targeting and minimization procedures which are at the heart of the present compromise. It also established clear authority and procedures for individual judicial orders where there is probable cause for targeting Americans overseas. This may long be regarded as the single most important innovation of the act we will soon pass.

Additionally, during debate on our Senate bill, we identified other needed improvements that have been addressed in this compromise, including strengthening exclusivity, something Senator FEINSTEIN was a great advocate of, and also a shorter sunset, something Senator CARDIN wanted to see happen; that is, when the bill sunsets, and it will end before the end of the next administration.

The bottom line is, we started with a good product in February and, through hard work and compromise with all parties in both Houses, we have made it even stronger. And we have. We have. We are all slightly aghast at what we were able to do. So let me mention a few of the key features in this new compromise.

First, the agreement makes changes in the provisions related to targeting foreigners overseas to increase protections for Americans. It requires the

FISA Court to approve targeting and minimization procedures before collections begin in virtually all instances. The Attorney General and the Director of National Intelligence can move forward without a court order only in what will be extremely rare instances, if emergency circumstances exist. And there is a way that is done which is time minimized, a total of 37 days, but it doesn't happen.

It preserves the definition of ''electronic surveillance.'' That is important. It doesn't sound very interesting, but it is important. It preserves that definition found in title I of FISA to ensure that there are no unintended consequences—that sounds like gobbledygook, but it isn't—relating to when a warrant must be obtained under FISA or how information obtained using FISA can be used. In other words, we leave the definition of ''telecommunications'' exactly as it is. We do not change it. If there is to be a change, then there must be legislative action to expand or make that change.

But unintended consequences is when something you do in one bill affects something that happened in another bill, and you just do not know it at the time you are doing it. You have to be very careful about that. So that is why we did that.

Second, the agreement contains additional measures compared to the Senate bill to improve oversight and accountability—the two greatest needs we have in the Congress and for the administration.

It shortens the sunset of the legislation to December 31, 2012, to ensure the FISA modernization law we are going to pass is reviewed in the next administration.

It requires a comprehensive review by multiple inspectors general of the President's warrantless surveillance program to ensure Congress has a complete set of facts about the program. We will have them. We will be informed. The public will be informed about that.

Third, the agreement assures that no past or future congressional authorization for the use of military force may be used to justify the conduct of warrantless surveillance electronically, unless Congress explicitly provides that can happen. That means the President cannot ever do what he did again. No other President can ever do that. FISA rules, and only the Congress can make the change.

With enactment of this agreement, there will be no question that Congress intends that only an express statutory authorization for electronic surveillance or interception may constitute an additional exclusive means for that surveillance or interception. It is logical, and it is necessary.

This is reinforced by the clarification that criminal and civil penalties can be imposed for any electronic surveillance that is not conducted in accordance with FISA or specifically listed provisions of title XVIII. We are prepared to do criminal, civil fines. It is in the bill. It will happen if somebody tries to do something.

Finally, with respect to the liability protection provisions of title II, the new language is improved in a number of ways. The agreement makes clear that the district court has the authority to review the documents provided to the companies to determine whether the Attorney General has met the statutory requirements for the certification under the statute.

In addition, the plaintiffs are given their fair day in court in our bill, as the parties to the litigation are explicitly provided the opportunity to brief the legal and constitutional issues before the court, to the court. And the district court, in deciding the question, must go beyond whether the Attorney General abused his discretion in preparing his certification to seek the dismissal of a lawsuit. Under the agreement, the district court must decide whether the Attorney General's certification is supported by ''substantial evidence.'' It is a good bar.

These are important additions and clarifications, and I hope many of my colleagues will recognize how far we have come. Remember, this is a bill that the House would not even vote on a couple of months ago. They would not even vote on it. So we just went over to them, to STENY HOYER, who deserves all praise for being an unbelievable moderator, bringer-together of opinions and people and a lot of people who are reluctant over there about doing anything, and gradually, through compromise, through extensive consultation, worked it out so they could agree on the bill. Indeed, Speaker PELOSI went to the floor of the House and spoke as to why she was going to vote for the bill—which she did.

Now, before I conclude, I must say a few words about all the people—and spare me on this, I say to the Presiding Officer—who worked together to make this happen.

House majority leader STENY HOYER is—I have down here in my text ''a near saint.'' I have decided that is in extremis. I think he is extraordinary—extraordinary. He deserves tremendous credit for his ability to bring people together with strongly divergent views and not give up until a compromise is achieved. He has everything on his plate, but he always seemed to have time for—he kept saying he was not really schooled in this, but he knew everything that was going on.

Vice Chairman BOND and House Minority Whip BLUNT also deserve our thanks and our praise for their hard work and unending commitment. The other leaders of the House and Senate Intelligence and Judiciary Committees—SILVESTRE REYES, PETER HOEKSTRA, JOHN CONYERS, LAMAR SMITH, and on our side PAT LEAHY and ARLEN SPECTER—not all of whom have or will support the final bill—also deserve thanks for their valuable contributions for making the legislation a much better product.

My own leader, HARRY REID, deserves special credit for insisting that we persevere on protecting national security and civil liberties, even though at times he believed he himself could not support our ultimate compromise. I do not know what that result will be, but he has been terrific in pushing us.

In addition, we would not have reached this critical juncture without the unlimited support of the Director of National Intelligence, Mike McConnell, Attorney General Michael Mukasey, and the dedicated staff of the DNI, DOJ, and NSA counsel, in particular Ben Powell, Brett Gerry, John Demers, Vito Potenza, and Chris Thuma. I did not think I would be saying those words, but I am saying them, and I do believe them deeply. All of those individuals worked with us for months on this issue, putting in long hours, even at times when there was not light at the end of the tunnel.

As we know all too well, the legislative efforts of the House and the Senate would come to a screeching halt if we were forced to operate without the seamless efforts of our staffs.

I would like to thank my exceptionally talented staff: Andy Johnson, Mike Davidson, Alissa Starzak, Chris Healey, and Melvin Dubee—all of whom brought an enormous amount of expertise, creativity, and perseverance to the table.

I want to single out Mike Davidson. Mike Davidson is a very smart lawyer. He has this way of when everything is collapsing all about him—it is kind of a let's come and reason together. Let's be practical. He is such a good person and so smart and so respected for what he knows that people follow his lead. It was in many ways because of him that a lot of our problems got solved. He would not quit on them, and he would keep saying: Now, let's deal with this practically. And he uses his hands just in that manner. It worked because we have a bill.

I would also like to thank Mariah Sixkiller, Brian Diffel, Joe Onek, Mike Sheehy, Jeremy Bash, Wyndee Parker, Eric Greenwald, Chris Donesa, Lou DeBaca, Perry Apelbaum, Ted Kalo, and Caroline Lynch in the House of Representatives; and in the Senate, Louis Tucker, Jack Livingston, Kathleen Rice, Mary DeRosa, Zulima Espinel, Matt Solomon, Nick Rossi, Ron Weich, Serena Hoy, and Marcel Lettre for their efforts.

I may have left somebody out. But I think the Presiding Officer thinks I have probably done enough. It is heartfelt, and if you have been through the process you really feel what people put into it and what they give up.

Madam President, this is a very proud day for the Senate, for national security and civil liberties, and for the Congress in general. I would venture to say this may be the most important bill we will pass this year. We have proven that compromise is not a lost virtue and that good, sound policy is not only possible, it is achievable.

I thank the Presiding Officer and yield the floor.

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

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

Mr. DODD. Madam President, I see my good friend from West Virginia on the floor. While I have some disagreement with him on the effort he has made on the FISA bill, I commend my friend from West Virginia. He has the thankless task of heading up the Intelligence Committee, which is a difficult job. I wish to acknowledge that and recognize that. My respect for him and the work he is doing and trying to do on this issue is something I respect immensely. Unfortunately, we don't agree on one aspect—at least one aspect—of this bill, but that in no way diminishes my respect for the effort he has made to try to produce as good a bill as he can under the circumstances. You only have to try and manage a bill around here to understand how difficult that can be, as someone who is engaged right now in this housing proposal.

Senator SHELBY and I have spent weeks putting together a bill that has enjoyed almost unanimous support in our committee—19 to 2—coming out of the Banking Committee. We had the vote of 83 to 9 the other day on a cloture motion to deal with a proposal we put together covering everything from mortgage revenue bonds and tax incentives for people to buy foreclosed properties, not to mention the GSE—the government sponsored enterprises—reform, an affordable housing program in perpetuity to assist rental housing opportunities in the Nation, as well as the HOPE for Homeowners Act to deal with the foreclosure crisis. Here we are now approaching the late afternoon of Wednesday. We had the cloture vote yesterday morning, about 30 hours ago. We have yet to have one amendment I can deal with because one Senator is insisting that his bill be paramount, that we disregard the efforts we have made to listen to ideas, to take additional suggestions that have come from other Members to incorporate as part of this bill.

Senator KOHL of Wisconsin has a very good proposal which we have worked out. Senator SUNUNU has made a proposal as well and we have been able to modify it and work with him to be a part of it. Senator ISAKSON has made a proposal we are working on to deal with a date in this bill that could make a difference. Senator BOND has a proposal we are working on dealing with disclosures. Senator KOHL and Senator NELSON are working on a proposal dealing with 401(k)s. All of these ideas have to be held in abeyance because one Senator won't even let us consider these matters on the floor, to bring them up and to deal with them.

It is awfully difficult to understand, when you consider that between 8,000 and 9,000 people every day are filing for foreclosure in this country. This is the center of our economic problems in the Nation.

The Wall Street Journal reported today in a banner headline that consumer confidence in this Nation is at the lowest point it has been since the late 1980s, early 1990s. A report yesterday actually takes it back to 1967. We are also told that home values are declining by the hour in this country. The Case-Schiller Index indicates that home values may decline by as much as 30 percent over the next 2 or 3 years. This is affecting student loans, it is affecting municipal finance, and it is affecting commercial borrowing. We are literally in a stall with the economy growing worse and the level of optimism and confidence of the American people declining at a rapid rate.

There is nothing more important we could do before adjourning for the next week to go home for Independence Day than to deal with this bill. We could literally complete this housing bill in about an hour. That is about all it would take to consider the amendments we can agree to, to adopt the ones we have, and then move this bill off this floor, out of this Chamber to the point that I think the House may accept what we have done, and send the bill to the President for his signature.

What better message to send to those who are facing potential foreclosure, of losing their most important and valuable asset that the overwhelming majority of Americans will ever have, not just in financial terms, but in the context of having a home for their families. This is something most Americans wish for their children, wish for their grandchildren, wish to have themselves, that idea of a home where you grow up and live. The fact that between 8,000 and 9,000 people—not on a weekly basis, not on a monthly basis, but every single day—every day we are home next week, every day we are gone from here, remind yourselves that another 9,000 people are beginning to file foreclosure and losing their homes. Neighborhoods collapse, values in these neighborhoods go down, and we see the continued suffering that goes on in our country, all because I can't even bring up and allow consideration of some amendments on this bill.

We have been at this now since January, trying to put this together and here we are in late June and still unable to get even consideration of amendments or to vote on some we may disagree with. There are many others of our colleagues here who have some ideas. I failed to mention Senator VOINOVICH. We have proposals from Senator LEVIN and Senator STABENOW involving important projects in their State, not to mention Massachusetts as well. There are a number of other things included in this legislation providing the kind of support for those who are out there, including counseling to people going through foreclosure or who could go through foreclosure. All of these elements could make a difference; the community development block grants to mayors, county supervisors, and Governors that could provide some targeted help in neighborhoods that have foreclosed properties.

We learn from screaming headlines on a daily basis—you need not hear my voice; just listen to what is going on in almost every State in the country. Now the States of California and Nevada are particularly hard-pressed, as well as Arizona, Florida, Michigan, and Ohio are seeing these numbers at record levels. The State of Nevada, in fact, I think, on a per capita basis has the worst foreclosure rate in the country, what that State is going through and the people are suffering from in that jurisdiction, with 10, I am told, centers around the State trying to help people hang on to their homes if they can.

Here we have a proposal that would provide that kind of relief, a system that would allow for workouts where people could have a new mortgage they could afford to pay, as well as paying into the program at some cost, and the lenders taking, of course, a significant cut in what they would otherwise be getting. But it would allow us to keep people in their homes.

So in those States that are feeling this particularly, I want them to know there are those of us here—and they ought to know the majority leader of this body, Senator HARRY REID, has been on the forefront of trying to get this bill up, trying to allow us to vote on it to get the job done. I wish to thank him for that, as the chairman of the Banking Committee, to have a majority leader who understands this priority is at the top of our list. I am deeply grateful to him for making it possible for us to get as far as we have.

But to know we are down here with a few remaining hours before we will be leaving for a week or 10 days; knowing that in that period of time, unnecessarily, in my view, more Americans may end up paying that awful price, watching their home value decline, watching them possibly lose their homes; that idea of being able to build that equity and provide for your children's education, to contribute to your retirement, to deal with an unexpected illness in the family where that equity could make a difference, all of that is eroding because we can't get off the dime because we have a colleague who wants to insist that his proposal be paramount, that we drop everything else and deal with that bill. I say that respectfully. I have been here 27 years and this happens periodically. But at this moment, at this time, facing the worst crisis in housing since the Great Depression, this is not the kind of reaction we ought to be getting.

I am going to come here periodically as long as we are here to talk about this. I will make unanimous consent requests, or the leader will, to try and

let us move on this. When objection is heard, then that Senator ought to have the courage, in my view, to stand up and express that objection on why we can't deal with this housing bill. Even if you disagree with the bill, allow us to vote. Allow your colleagues to offer their amendments. They need to explain to the American people why it is that after all of this effort, with an 83-to-9 vote yesterday, that Democrats and Republicans want to do something about housing, but we can't get a bill up and can't consider these outstanding amendments.

I apologize to my colleagues for this, but they ought to know what is going on and why it is. Members have asked me: Why aren't we voting? Why can't we bring up these matters? The reason is because I need unanimous consent to do so and one Senator can object, and because they object, none of these other amendments, Republican or Democratic amendments, can be considered or modified, even, in this context. So that is why we are here and where we are. If people are wondering why, after this long time, despite the efforts of bringing people together, we are not managing to get this bill done, that is the reason. My hope is that common sense and reasonableness may prevail in the coming hour or so that will allow us to get to this. But if we are unable to do so, then that is the reason.

With that, I yield the floor and note the absence of a quorum.

The PRESIDING OFFICER. (Mr. NELSON of Nebraska). The clerk will call the roll.

The assistant legislative clerk proceeded to call the roll.

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

The PRESIDING OFFICER (Ms. STABENOW). Without objection, it is so ordered.

Mr. BOND. Madam President, I am hoping very shortly we will vote on or act on or somehow pass an amendment that I have offered, offered on the previous housing bill which, incidentally, I thought was a much better bill than this one.

I ask unanimous consent to speak for—well, Madam President, I am going to continue to tell you that.

The teaser rate problem is one which has afflicted many borrowers in Missouri. They get these offers for loan rates. They are told, verbally, that they can get a good rate when the time expires. The problem is, it is not in writing. So we would require full disclosure in advance, written down. If the people are going to make a representation, it has to be a binding representation. My amendment is designed to advise consumers, before they purchase a home, what they are going to have to pay.

I understand there is a modification that will make this amendment acceptable to all sides. I think it is terribly important to avoid putting so many people, in the future, in the trap that they now find themselves, that we require they disclose what the rates will be, and if they want to offer good terms, they put them in writing.

I urge my colleagues to support this amendment as modified.

I yield the floor.

The PRESIDING OFFICER. All time postcloture has expired.

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

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

Mr. REID. I ask unanimous consent the pending amendments be withdrawn.

The PRESIDING OFFICER. Is there objection? Without objection, it is so ordered.

The question is on the motion to concur, with an amendment.

Mr. MCCONNELL. I ask for the yeas and nays.

The PRESIDING OFFICER. Is there a sufficient second?

There appears to be a sufficient second.

The clerk will call the roll.

Mr. REID. Madam President, are we in a quorum call?

The PRESIDING OFFICER. We are not.

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. REID. Madam 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. I ask unanimous consent that the previous order which was entered regarding the withdrawing of the amendments we vitiated.

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

AMENDMENT NO. 4987, AS MODIFIED, AMENDMENT NO. 4999, AS MODIFIED, AND AMENDMENT NO. 4988, AS MODIFIED

Mr. REID. I ask unanimous consent that the pending amendments No. 4987, Bond; No. 4999, Sununu; and No. 4988, Kohl, be agreed to, as modified, with the changes at the desk.

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

The amendments, as modified, were agreed to, as follows:

AMENDMENT NO. 4987, AS MODIFIED

On page 522, line 2, before the period insert the following: ''including the fact that the initial regular payments are for a specific time period that will end on a certain date, that payments will adjust afterwards potentially to a higher amount, and that there is no guarantee that the borrower will be able to refinance to a lower amount''.

AMENDMENT NO. 4999, AS MODIFIED

On page 538, between lines 6 and 7, insert the following:

TITLE VII—SMALL PUBLIC HOUSING AUTHORITIES PAPERWORK REDUCTION ACT

SEC. 2701. SHORT TITLE.

This title may be cited as the ''Small Public Housing Authorities Paperwork Reduction Act''.

SEC. 2702. PUBLIC HOUSING AGENCY PLANS FOR CERTAIN QUALIFIED PUBLIC HOUSING AGENCIES.

(a) IN GENERAL.—Section 5A(b) of the United States Housing Act of 1937 (42 U.S.C. 1437c–1(b)) is amended by adding at the end the following:

''(3) EXEMPTION OF CERTAIN PHAS FROM FILING REQUIREMENT.—

''(A) IN GENERAL.—Notwithstanding paragraph (1) or any other provision of this Act—

''(i) the requirement under paragraph (1) shall not apply to any qualified public housing agency; and

''(ii) except as provided in subsection (e)(4)(B), any reference in this section or any other provision of law to a 'public housing agency' shall not be considered to refer to any qualified public housing agency, to the extent such reference applies to the requirement to submit an annual public housing agency plan under this subsection.

''(B) CIVIL RIGHTS CERTIFICATION.—Notwithstanding that qualified public housing agencies are exempt under subparagraph (A) from the requirement under this section to prepare and submit an annual public housing plan, each qualified public housing agency shall, on an annual basis, make the certification described in paragraph (16) of subsection (d), except that for purposes of such qualified public housing agencies, such paragraph shall be applied by substituting 'the public housing program of the agency' for 'the public housing agency plan'.

''(C) DEFINITION.—For purposes of this section, the term 'qualified public housing agency' means a public housing agency that meets the following requirements:

''(i) The sum of (I) the number of public housing dwelling units administered by the agency, and (II) the number of vouchers under section 8(o) of the United States Housing Act of 1937 (42 U.S.C. 1437f(o)) administered by the agency, is 550 or fewer.

''(ii) The agency is not designated under section 6(j)(2) as a troubled public housing agency, and does not have a failing score under the section 8 Management Assessment Program during the prior 12 months.''.

(b) RESIDENT PARTICIPATION.—Section 5A of the United States Housing Act of 1937 (42 U.S.C. 1437c–1) is amended—

(1) in subsection (e), by inserting after paragraph (3) the following:

''(4) QUALIFIED PUBLIC HOUSING AGENCIES.—

''(A) IN GENERAL.—Except as provided in subparagraph (B), nothing in this section may be construed to exempt a qualified public housing agency from the requirement under paragraph (1) to establish 1 or more resident advisory boards. Notwithstanding that qualified public housing agencies are exempt under subsection (b)(3)(A) from the requirement under this section to prepare and submit an annual public housing plan, each qualified public housing agency shall consult with, and consider the recommendations of the resident advisory boards for the agency, at the annual public hearing required under subsection (f)(5), regarding any changes to the goals, objectives, and policies of that agency.

''(B) APPLICABILITY OF WAIVER AUTHORITY.—Paragraph (3) shall apply to qualified public housing agencies, except that for purposes of such qualified public housing agencies, subparagraph (B) of such paragraph shall be applied by substituting 'the functions described in the second sentence of

paragraph (4)(A)' for 'the functions described in paragraph (2)'.

''(f) PUBLIC HEARINGS.—''; and

(2) in subsection (f) (as so designated by the amendment made by paragraph (1)), by adding at the end the following:

''(5) QUALIFIED PUBLIC HOUSING AGENCIES.—

''(A) REQUIREMENT.—Notwithstanding that qualified public housing agencies are exempt under subsection (b)(3)(A) from the requirement under this section to conduct a public hearing regarding the annual public housing plan of the agency, each qualified public housing agency shall annually conduct a public hearing—

''(i) to discuss any changes to the goals, objectives, and policies of the agency; and

''(ii) to invite public comment regarding such changes.

''(B) AVAILABILITY OF INFORMATION AND NOTICE.—Not later than 45 days before the date of any hearing described in subparagraph (A), a qualified public housing agency shall—

''(i) make all information relevant to the hearing and any determinations of the agency regarding changes to the goals, objectives, and policies of the agency to be considered at the hearing available for inspection by the public at the principal office of the public housing agency during normal business hours; and

''(ii) publish a notice informing the public that—

''(I) the information is available as required under clause (i); and

''(II) a public hearing under subparagraph (A) will be conducted.''.

AMENDMENT NO. 4988, AS MODIFIED

On page 538, between lines 6 and 7, insert the following:

TITLE VIII—FORECLOSURE RESCUE FRAUD PROTECTION

SEC. 2801. SHORT TITLE.

This title may be cited as the ''Foreclosure Rescue Fraud Act of 2008''.

SEC. 2802. DEFINITIONS.

In this title:

(1) COMMISSION.—The term ''Commission'' means the Federal Trade Commission.

(2) FORECLOSURE CONSULTANT.—The term ''foreclosure consultant''—

(A) means a person who makes any solicitation, representation, or offer to a homeowner facing foreclosure on residential real property to perform, for gain, or who performs, for gain, any service that such person represents will prevent, postpone, or reverse the effect of such foreclosure; and

(B) does not include—

(i) an attorney licensed to practice law in the State in which the property is located who has established an attorney-client relationship with the homeowner;

(ii) a person licensed as a real estate broker or salesperson in the State where the property is located, and such person engages in acts permitted under the licensure laws of such State;

(iii) a housing counseling agency approved by the Secretary;

(iv) a depository institution (as defined in section 3 of the Federal Deposit Insurance Act (12 U.S.C. 1813));

(v) a Federal credit union or a State credit union (as defined in section 101 of the Federal Credit Union Act (12 U.S.C. 1752)); or

(vi) an insurance company organized under the laws of any State.

(3) HOMEOWNER.—The term ''homeowner'', with respect to residential real property for which an action to foreclose on the mortgage or deed of trust on such real property is filed, means the person holding record title to such property as of the date on which such action is filed.

(4) LOAN SERVICER.—The term ''loan servicer'' has the same meaning as the term ''servicer'' in section 6(i)(2) of the Real Estate Settlement Procedures Act of 1974 (12 U.S.C. 2605(i)(2)).

(5) RESIDENTIAL MORTGAGE LOAN.—The term ''residential mortgage loan'' means any loan primarily for personal, family, or household use that is secured by a mortgage, deed of trust, or other equivalent consensual security interest on a dwelling (as defined in section 103(v) of the Truth in Lending Act (15 U.S.C. 1602)(v)) or residential real estate upon which is constructed or intended to be constructed a dwelling (as so defined).

(6) RESIDENTIAL REAL PROPERTY.—The term ''residential real property'' has the meaning given the term ''dwelling'' in section 103 of the Consumer Credit Protection Act (15 U.S.C. 1602).

(7) SECRETARY.—The term ''Secretary'' means the Secretary of Housing and Urban Development.

SEC. 2803. MORTGAGE RESCUE FRAUD PROTECTION.

(a) LIMITS ON FORECLOSURE CONSULTANTS.—A foreclosure consultant may not—

(1) claim, demand, charge, collect, or receive any compensation from a homeowner for services performed by such foreclosure consultant with respect to residential real property until such foreclosure consultant has fully performed each service that such foreclosure consultant contracted to perform or represented would be performed with respect to such residential real property;

(2) hold any power of attorney from any homeowner, except to inspect documents, as provided by applicable law;

(3) receive any consideration from a third party in connection with services rendered to a homeowner by such third party with respect to the foreclosure of residential real property, unless such consideration is fully disclosed, in a clear and conspicuous manner, to such homeowner in writing before such services are rendered;

(4) accept any wage assignment, any lien of any type on real or personal property, or other security to secure the payment of compensation with respect to services provided by such foreclosure consultant in connection with the foreclosure of residential real property; or

(5) acquire any interest, directly or indirectly, in the residence of a homeowner with whom the foreclosure consultant has contracted.

(b) CONTRACT REQUIREMENTS.—

(1) WRITTEN CONTRACT REQUIRED.—Notwithstanding any other provision of law, a foreclosure consultant may not provide to a homeowner a service related to the foreclosure of residential real property—

(A) unless—

(i) a written contract for the purchase of such service has been signed and dated by the homeowner; and

(ii) such contract complies with the requirements described in paragraph (2); and

(B) before the end of the 3-business-day period beginning on the date on which the contract is signed.

(2) TERMS AND CONDITIONS OF CONTRACT.—The requirements described in this paragraph, with respect to a contract, are as follows:

(A) The contract includes, in writing—

(i) a full and detailed description of the exact nature of the contract and the total amount and terms of compensation;

(ii) the name, physical address, phone number, email address, and facsimile number, if any, of the foreclosure consultant to whom a notice of cancellation can be mailed or sent under subsection (d); and

(iii) a conspicuous statement in at least 12 point bold face type in immediate proximity to the space reserved for the homeowner's signature on the contract that reads as follows: ''You may cancel this contract without penalty or obligation at any time before midnight of the 3rd business day after the date on which you sign the contract. See the attached notice of cancellation form for an explanation of this right.''.

(B) The contract is written in the principal language used to solicit or market the services to the homeowner.

(C) The contract is accompanied by the form required by subsection (c)(2).

(c) RIGHT TO CANCEL CONTRACT.—

(1) IN GENERAL.—With respect to a contract between a homeowner and a foreclosure consultant regarding the foreclosure on the residential real property of such homeowner, such homeowner may cancel such contract without penalty or obligation by mailing a notice of cancellation not later than midnight of the 3rd business day after the date on which such contract is executed or would become enforceable against the parties to such contract.

(2) CANCELLATION FORM AND OTHER INFORMATION.—Each contract described in paragraph (1) shall be accompanied by a form, in duplicate, that—

(A) has the heading ''Notice of Cancellation'' in boldface type; and

(B) contains in boldface type the following statement:

''You may cancel this contract, without any penalty or obligation, at any time before midnight of the 3rd day after the date on which the contract is signed by you.

''To cancel this contract, mail or deliver a signed and dated copy of this cancellation notice or any other equivalent written notice to [insert name of foreclosure consultant] at [insert address of foreclosure consultant] before midnight on [insert date].

''I hereby cancel this transaction on [insert date] [insert homeowner signature].''.

(d) WAIVER OF RIGHTS AND PROTECTIONS PROHIBITED.—

(1) IN GENERAL.—A waiver by a homeowner of any protection provided by this section or any right of a homeowner under this section—

(A) shall be treated as void; and

(B) may not be enforced by any Federal or State court or by any person.

(2) ATTEMPT TO OBTAIN A WAIVER.—Any attempt by any person to obtain a waiver from any homeowner of any protection provided by this section or any right of the homeowner under this section shall be treated as a violation of this section.

(3) CONTRACTS NOT IN COMPLIANCE.—Any contract that does not comply with the applicable provisions of this title shall be void and may not be enforceable by any party.

SEC. 2804. WARNINGS TO HOMEOWNERS OF FORECLOSURE RESCUE SCAMS.

(a) IN GENERAL.—If a loan servicer finds that a homeowner has failed to make 2 consecutive payments on a residential mortgage loan and such loan is at risk of being foreclosed upon, the loan servicer shall notify such homeowner of the dangers of fraudulent activities associated with foreclosure.

(b) NOTICE REQUIREMENTS.—Each notice provided under subsection (a) shall—

(1) be in writing;

(2) be included with a mailing of account information;

(3) have the heading ''Notice Required by Federal Law'' in a 14-point boldface type in English and Spanish at the top of such notice; and

(4) contain the following statement in English and Spanish: ''Mortgage foreclosure is a complex process. Some people may approach you about saving your home. You should be careful about any such promises. There are government and nonprofit agencies you may contact for helpful information about the foreclosure process. Contact your

lender immediately at [_____], call the Department of Housing and Urban Development Housing Counseling Line at (800) 569–4287 to find a housing counseling agency certified by the Department to assist you in avoiding foreclosure, or visit the Department's Tips for Avoiding Foreclosure website at http://www.hud.gov/foreclosure for additional assistance.'' (the blank space to be filled in by the loan servicer and successor telephone numbers and Uniform Resource Locators (URLs) for the Department of Housing and Urban Development Housing Counseling Line and Tips for Avoiding Foreclosure website, respectively).

SEC. 2805. CIVIL LIABILITY.

(a) IN GENERAL.—Any foreclosure consultant who fails to comply with any provision of section 2803 or 2804 with respect to any other person shall be liable to such person in an amount equal to the greater of—

(1) the amount of any actual damage sustained by such person as a result of such failure; or

(2) any amount paid by the person to the foreclosure consultant.

(b) CLASS ACTIONS PROHIBITED.—No Federal court may certify a civil action under subsection (a) as a class action under rule 23 of the Federal Rules of Civil Procedure.

SEC. 2806. ADMINISTRATIVE ENFORCEMENT.

(a) ENFORCEMENT BY FEDERAL TRADE COMMISSION.—

(1) UNFAIR OR DECEPTIVE ACT OR PRACTICE.—A violation of a prohibition described in section 2803 or a failure to comply with any provision of section 2803 or 2804 shall be treated as a violation of a rule defining an unfair or deceptive act or practice described under section 18(a)(1)(B) of the Federal Trade Commission Act (15 U.S.C. 57a(a)(1)(B)).

(2) ACTIONS BY THE FEDERAL TRADE COMMISSION.—The Federal Trade Commission shall enforce the provisions of sections 2803 and 2804 in the same manner, by the same means, and with the same jurisdiction, powers, and duties as though all applicable terms and provisions of the Federal Trade Commission Act (15 U.S.C. 41 et seq.) were incorporated into and made part of this title.

(b) STATE ACTION FOR VIOLATIONS.—

(1) AUTHORITY OF STATES.—In addition to such other remedies as are provided under State law, whenever the chief law enforcement officer of a State, or an official or agency designated by a State, has reason to believe that any person has violated or is violating the provisions of section 2803 or 2804, the State—

(A) may bring an action to enjoin such violation;

(B) may bring an action on behalf of its residents to recover damages for which the person is liable to such residents under section 2805 as a result of the violation; and

(C) in the case of any successful action under subparagraph (A) or (B), shall be awarded the costs of the action.

(2) RIGHTS OF FEDERAL TRADE COMMISSION.—

(A) NOTICE TO COMMISSION.—The State shall serve prior written notice of any civil action under paragraph (1) upon the Commission and provide the Commission with a copy of its complaint, except in any case in which such prior notice is not feasible, in which case the State shall serve such notice immediately upon instituting such action.

(B) INTERVENTION.—The Commission shall have the right—

(i) to intervene in any action referred to in subparagraph (A);

(ii) upon so intervening, to be heard on all matters arising in the action; and

(iii) to file petitions for appeal in such actions.

(3) INVESTIGATORY POWERS.—For purposes of bringing any action under this subsection, nothing in this subsection shall prevent the chief law enforcement officer, or an official or agency designated by a State, from exercising the powers conferred on the chief law enforcement officer or such official by the laws of such State to conduct investigations or to administer oaths or affirmations, or to compel the attendance of witnesses or the production of documentary and other evidence.

(4) LIMITATION.—Whenever the Federal Trade Commission has instituted a civil action for a violation of section 2803 or 2804, no State may, during the pendency of such action, bring an action under this section against any defendant named in the complaint of the Commission for any violation of section 2803 or 2804 that is alleged in that complaint.

SEC. 2807. LIMITATION.

No violation of a prohibition described in section 2803 or a failure to comply with any provision of section 2803 or 2804 shall provide grounds for the halt, delay, or modification of a foreclosure process or proceeding.

SEC. 2808. PREEMPTION.

Nothing in this title affects any provision of State or local law respecting any foreclosure consultant, residential mortgage loan, or residential real property that provides equal or greater protection to homeowners than what is provided under this title.

APPRAISAL STANDARDS

Mr. SHELBY. Madam President, I rise to engage Senator DODD in a colloquy discussing the amendment offered by Senator DOLE concerning appraisal standards. I would like to acknowledge the distinguished Senator from North Carolina for her efforts in crafting this amendment.

In December of last year, Attorney General Cuomo of New York, along with Fannie Mae, Freddie Mac and OFHEO entered into an agreement to create a mortgage appraiser code of conduct. I applaud the work of the attorney general of New York for being proactive in trying to come up with a code of conduct in order to deal with some of the problems in the mortgage appraisal process.

While the ''code of conduct'' moves things in a positive direction, Fannie Mae and Freddie Mac are secondary market players, and the attorney general of New York has authority to deal with the conduct that touches upon the State of New York. In order to fully address the issue and create a unified standard affecting all mortgage originators, there must be a process involving all of the appropriate regulatory authorities including the Federal banking regulators who participate in the congressionally authorized Federal Financial Institutions Examination Counsel, FFIEC, subcommittee on appraisals. This would also provide regulated institutions with adequate opportunity to participate in the process.

The National Bank Act authorizes national banks to engage in mortgage lending, subject to OCC regulation. Since the early 1990s, each of the Federal banking regulators has had standards in place that deal with the conduct of mortgage appraisers. These standards were put in place to address many of the safety and soundness concerns that we are grappling with today. While I recognize the need to update and strengthen these standards, I believe that we need to be mindful of that structure, and rely upon it as part of the effort to reform the appraisal process.

The appraisal is a key component in ensuring sound underwriting both for banks and the consumer. I believe that the key concept of appraisal independence is laudable and although incorporated into Federal banking regulation, perhaps this construct needs to be strengthened.

Our goal should be to ensure that a standard exists that avoids inconsistencies, provides stronger consumer protection, and protects the safety and soundness of lending institutions. I believe that as a wake-up call to the regulators that their standards must be revamped and their enforcement stepped up.

Mr. DODD. I thank my colleague and agree with him on several fronts. The first is that I commend Attorney General Cuomo for his aggressive pursuit in ferreting out fraudulent appraisal practices. Law enforcement has said repeatedly that unscrupulous appraisers are the ''enablers'' of mortgage fraud.

Appraisers, seeking new business, are eager to ''hit the number'' needed to make sure a mortgage is approved. If they fail to give the lenders and brokers the appraisal needed to close the loan, they simply don't get any more referrals from those lenders. As a result, appraisers were inflating their estimates of house value, adding to the frenzy that created the housing bubble.

The guidelines negotiated by Attorney General Cuomo with Fannie and Freddie, and approved by OFHEO, seek to ensure that this kind of pressure cannot be brought to bear on appraisers. They are designed to ensure independence and address the significant evidence of collusion between lenders and appraisers that Mr. Cuomo uncovered.

I understand there is great concern about the process for the reforms the attorney general is demanding. I also understand that some people don't like the new standards which will affect the practices of the lenders that sell their mortgages to Fannie and Freddie.

As a result, I agree with my colleague that the Federal banking agencies have a role in this process. These agencies already have regulations in place that set forth appraisal standards for their lenders. However, the appraisal fraud over the past couple of years, and the attorney general's action, should serve as a wake-up call to the regulators that their standards must be revamped and their enforcement stepped up.

AMENDMENT NO. 4984 WITHDRAWN

Mr. REID. I ask unanimous consent that the Dole amendment be withdrawn.

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

VOTE ON MOTION TO CONCUR

Mr. REID. Madam President, is the matter now the concurrence in the substitute amendment?

The PRESIDING OFFICER. That is correct. The question is on agreeing to the motion to concur in the House amendment, with amendment No. 4983, as amended.

The yeas and nays have been previously ordered.

The question is on agreeing to the motion.

The clerk will call the roll.

The legislative clerk called the roll.

Mr. DURBIN. I announce that the Senator from West Virginia (Mr. BYRD), the Senator from New York (Mrs. CLINTON), the Senator from Massachusetts (Mr. KENNEDY), and the Senator from Illinois (Mr. OBAMA) are necessarily absent.

Mr. KYL. The following Senator is necessarily absent: the Senator from Arizona (Mr. MCCAIN).

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

The result was announced—yeas 79, nays 16, as follows:

[Rollcall Vote No. 157 Leg.]

YEAS—79

Akaka	Graham	Nelson (FL)
Alexander	Grassley	Nelson (NE)
Allard	Gregg	Pryor
Baucus	Hagel	Reed
Bayh	Harkin	Reid
Bennett	Hatch	Roberts
Biden	Hutchison	Rockefeller
Bingaman	Inouye	Salazar
Boxer	Isakson	Sanders
Brown	Johnson	Schumer
Cantwell	Kerry	Sessions
Cardin	Klobuchar	Shelby
Carper	Kohl	Smith
Casey	Landrieu	Snowe
Cochran	Lautenberg	Specter
Coleman	Leahy	Stabenow
Collins	Levin	Stevens
Conrad	Lieberman	Sununu
Corker	Lincoln	Tester
Craig	Lugar	Voinovich
Dodd	Martinez	Warner
Dole	McCaskill	Webb
Domenici	McConnell	Whitehouse
Dorgan	Menendez	Wicker
Durbin	Mikulski	Wyden
Feingold	Murkowski	
Feinstein	Murray	

NAYS—16

Barrasso	Coburn	Inhofe
Bond	Cornyn	Kyl
Brownback	Crapo	Thune
Bunning	DeMint	Vitter
Burr	Ensign	
Chambliss	Enzi	

NOT VOTING—5

Byrd	Kennedy	Obama
Clinton	McCain	

The motion was agreed to.

FISA AMENDMENTS ACT OF 2008—MOTION TO PROCEED

CLOTURE MOTION

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

The 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, hereby move to bring to a close debate on the motion to proceed to Calendar No. 827, H.R. 6304, the FISA Amendments Act of 2008.

Sheldon Whitehouse, Patty Murray, Max Baucus, Tim Johnson, Ken Salazar, Barbara A. Mikulski, John D. Rockefeller, IV, Herb Kohl, Robert P. Casey, Jr., Daniel K. Inouye, Mary Landrieu, Blanche L. Lincoln, Mark L. Pryor, Dianne Feinstein, Thomas R. Carper, Joseph Lieberman, Claire McCaskill.

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

The question is, Is it the sense of the Senate that debate on the motion to proceed to H.R. 6304, the FISA Amendments Act of 2008, 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 West Virginia (Mr. BYRD), the Senator from New York (Mrs. CLINTON), the Senator from Massachusetts (Mr. KENNEDY), and the Senator from Illinois (Mr. OBAMA) are necessarily absent.

Mr. KYL. The following Senator is necessarily absent: the Senator from Arizona (Mr. MCCAIN).

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

The yeas and nays resulted—yeas 80, nays 15, as follows:

[Rollcall Vote No. 158 Leg.]

YEAS—80

Akaka	Domenici	Murkowski
Alexander	Dorgan	Murray
Allard	Ensign	Nelson (FL)
Barrasso	Enzi	Nelson (NE)
Baucus	Feinstein	Pryor
Bayh	Graham	Reed
Bennett	Grassley	Reid
Bingaman	Gregg	Roberts
Bond	Hagel	Rockefeller
Brownback	Hatch	Salazar
Bunning	Hutchison	Sessions
Burr	Inhofe	Shelby
Cardin	Inouye	Smith
Carper	Isakson	Snowe
Casey	Johnson	Specter
Chambliss	Klobuchar	Stabenow
Coburn	Kohl	Stevens
Cochran	Kyl	Sununu
Coleman	Landrieu	Tester
Collins	Levin	Thune
Conrad	Lieberman	Vitter
Corker	Lincoln	Voinovich
Cornyn	Lugar	Warner
Craig	Martinez	Webb
Crapo	McCaskill	Whitehouse
DeMint	McConnell	Wicker
Dole	Mikulski	

NAYS—15

Biden	Durbin	Leahy
Boxer	Feingold	Menendez
Brown	Harkin	Sanders
Cantwell	Kerry	Schumer
Dodd	Lautenberg	Wyden

NOT VOTING—5

Byrd	Kennedy	Obama
Clinton	McCain	

The PRESIDING OFFICER. On this vote, the yeas are 80, the nays are 15. Three-fifths of the Senators duly chosen and sworn having voted in the affirmative, the motion is agreed to.

The majority leader is recognized.

UNANIMOUS CONSENT REQUEST—H.R. 3221

Mr. REID. Madam President, I ask unanimous consent that the Senate concur in the amendments of the House—this is on the housing bill—striking titles VI through XI to the amendment of the Senate; and finally that the Senate then disagree to the amendments of the House adding a new title and inserting a new section to the amendment of the Senate to H.R. 3221, notwithstanding rule XXII; further that a managers' amendment which has been cleared by the managers and the leaders also be in order.

The PRESIDING OFFICER. Is there objection?

Mr. ENSIGN. Madam President, I will object. I have been attempting, with the Senator in the chair right now, to attach the Clean Energy Tax Stimulus amendment to the housing bill and get a vote on it. This is an amendment that passed on the housing bill a couple months ago by a vote of 88 to 8 in a bipartisan fashion in the Senate.

People say: What does this have to do with housing? Well, it has several things to do with housing. There is energy efficiency built in for new home construction. If somebody wants to upgrade their home with renewable energy products, they can do that with the help of tax credits in this amendment. It is a good amendment because this country is facing an energy crisis and gasoline prices are too high; home heating oil is too high; and natural gas has gone up by 70 percent. We need to have more renewable energy in the United States. All we have to do is have a vote on this amendment, and we could proceed with the housing bill.

Mr. DURBIN. Will the Senator yield for a question?

Mr. ENSIGN. In a moment. I would say in closing that people have said—we can't do this. The House of Representatives would object because it isn't ''paid for.'' Well, there is $2.4 billion in unoffset tax provisions included in the Dodd/Shelby amendment and a large amount of this does not even relate to housing. Why should the House of Representatives accept $2.4 billion worth in tax incentives not paid for and object to our clean energy tax provisions at the same time? That is an example of why there is inconsistency in objecting to our amendment being voted on.

I yield for a question.

Mr. DURBIN. Madam President, I would like to ask, through the Chair, the Senator from Nevada if he could tell me the name of the State that has had 17 consecutive months leading the Nation in foreclosures.

Mr. ENSIGN. Madam President, there is no question that the whole country is facing a housing crisis and it is not just housing; it actually is leading to a liquidity problem, and my State like others has experienced difficulties. I wish to solve this problem, and improve this bill with the Clean Energy Tax Stimulus amendment——