

He said: I feel strongly about a number of these amendments and I am not going to agree to let this go forward unless I have these amendments, and he has been very reasonable. He has brought his number down from 11 to 3 or 4 and I appreciate that. But the time has come for me to take some action.

Again, I repeat, I do not have the luxury of waiting for a better time. However, I would like to be able to allow the Senator from Kentucky to give a few of his stem-winding speeches. He does a very good job presenting himself. But in order to expedite what I think is so important to continue the country's intelligence operations, I am going to move to table the pending motion to proceed to S. 1038. Following that vote, I am going to ask the Senate to proceed to a message received from the House earlier today. I will then move to concur with the amendment which will be the extension of the PATRIOT Act and I will file cloture on that motion.

Mr. President, I move to table and I ask for the yeas and nays.

The PRESIDING OFFICER. The question is on agreeing to the motion.

Is there a sufficient second?

There is a sufficient second.

The clerk will call the roll.

The legislative clerk called the roll.

Mr. PAUL (when his name was called). Present.

Mr. DURBIN. I announce that the Senator from Delaware (Mr. CARPER), the Senator from California (Mrs. FEINSTEIN), the Senator from North Carolina (Mrs. HAGAN), the Senator from South Dakota (Mr. JOHNSON), the Senator from Louisiana (Mrs. LANDRIEU), the Senator from Vermont (Mr. LEAHY), the Senator from Connecticut (Mr. LIEBERMAN), the Senator from Missouri (Mrs. MCCASKILL), and the Senator from New York (Mr. SCHUMER) are necessarily absent.

I further announce that, if present and voting, the Senator from Vermont (Mr. LEAHY) would vote "nay."

Mr. KYL. The following Senators are necessarily absent: the Senator from Missouri (Mr. BLUNT), the Senator from Texas (Mrs. HUTCHISON), and the Senator from Kansas (Mr. ROBERTS).

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

The result was announced—yeas 74, nays 13, as follows:

[Rollcall Vote No. 76 Leg.]

YEAS—74

Akaka	Coburn	Hatch
Alexander	Cochran	Hoey
Ayotte	Collins	Inhofe
Barrasso	Conrad	Inouye
Baucus	Coons	Isakson
Bennet	Corker	Johanns
Blumenthal	Cornyn	Johnson (WI)
Boozman	Crapo	Kerry
Boxer	DeMint	Kirk
Brown (MA)	Durbin	Klobuchar
Brown (OH)	Enzi	Kohl
Burr	Franken	Kyl
Cardin	Gillibrand	Lautenberg
Casey	Graham	Levin
Chambliss	Grassley	Lugar
Coats	Harkin	Manchin

McCain	Pryor	Stabenow
McConnell	Reed	Thune
Menendez	Reid	Toomey
Mikulski	Risch	Vitter
Moran	Rockefeller	Warner
Murray	Rubio	Webb
Nelson (NE)	Sessions	Whitehouse
Nelson (FL)	Shelby	Wicker
Portman	Snowe	

NAYS—13

Begich	Merkley	Udall (CO)
Bingaman	Murkowski	Udall (NM)
Cantwell	Sanders	Wyden
Heller	Shaheen	
Lee	Tester	

ANSWERED "PRESENT"—1

Paul

NOT VOTING—12

Blunt	Hutchison	Lieberman
Carper	Johnson (SD)	McCaskill
Feinstein	Landrieu	Roberts
Hagan	Leahy	Schumer

The motion was agreed to.

The PRESIDING OFFICER. The majority leader is recognized.

SMALL BUSINESS ADDITIONAL TEMPORARY EXTENSION ACT OF 2011

Mr. REID. Mr. President, I now ask the Chair to lay before the Senate a message from the House with respect to S. 990.

The Presiding Officer laid before the Senate the following message from the House of Representatives:

Resolved, That the bill from the Senate (S. 990) entitled "An Act to provide for an additional temporary extension of programs under the Small Business Act and the Small Business Investment Act of 1958, and for other purposes," do pass with the following amendment:

Strike out all after the enacting clause and insert:

SECTION 1. ADDITIONAL TEMPORARY EXTENSION OF AUTHORIZATION OF PROGRAMS UNDER THE SMALL BUSINESS ACT AND THE SMALL BUSINESS INVESTMENT ACT OF 1958.

(a) *IN GENERAL*.—Section 1 of the Act entitled "An Act to extend temporarily certain authorities of the Small Business Administration", approved October 10, 2006 (Public Law 109-316; 120 Stat. 1742), as most recently amended by section 1 of Public Law 112-1 (125 Stat. 3), is amended by striking "May 31, 2011" each place it appears and inserting "September 30, 2011".

(b) *EFFECTIVE DATE*.—The amendments made by subsection (a) shall take effect on May 30, 2011.

SEC. 2. COMPETITIVE SELECTION PROCEDURES FOR SBIR AND STTR PROGRAMS.

Section 9 of the Small Business Act (15 U.S.C. 638) is amended by inserting after subsection (r) the following:

"(s) *COMPETITIVE SELECTION PROCEDURES FOR SBIR AND STTR PROGRAMS*.—All funds awarded, appropriated, or otherwise made available in accordance with subsection (f) or (n) must be awarded pursuant to competitive and merit-based selection procedures."

MOTION TO CONCUR WITH AMENDMENT NO. 347

Mr. REID. Mr. President, I move to concur in the House amendment to S. 990 with an amendment, and I send a cloture motion to the desk.

The PRESIDING OFFICER. The clerk will report.

The assistant legislative clerk read as follows:

The Senator from Nevada [Mr. REID] moves to concur in the House amendment to S. 990, with an amendment numbered 347.

The amendment is as follows:

In lieu of the matter proposed to be inserted, insert the following:

SECTION 1. SHORT TITLE.

This Act may be cited as the "PATRIOT Sunsets Extension Act of 2011".

SEC. 2. SUNSET EXTENSIONS.

(a) *USA PATRIOT IMPROVEMENT AND RE-AUTHORIZATION ACT OF 2005*.—Section 102(b)(1) of the USA PATRIOT Improvement and Reauthorization Act of 2005 (Public Law 109-177; 50 U.S.C. 1805 note, 50 U.S.C. 1861 note, and 50 U.S.C. 1862 note) is amended by striking "May 27, 2011" and inserting "June 1, 2015".

(b) *INTELLIGENCE REFORM AND TERRORISM PREVENTION ACT OF 2004*.—Section 6001(b)(1) of the Intelligence Reform and Terrorism Prevention Act of 2004 (Public Law 108-458; "50 U.S.C. 1801 note) is amended by striking "May 27, 2011" and inserting "June 1, 2015".

MOTION TO REFER WITH INSTRUCTIONS

Mr. REID moves to refer the House message to the Committee on Small Business with instructions to report back forthwith with an amendment as follows:

At the appropriate place, insert the following:

This Act shall become effective 3 days after enactment.

CLOTURE MOTION

The PRESIDING OFFICER. The cloture motion having been presented under rule XXII, the Chair directs the clerk to read the motion.

The assistant legislative clerk read as follows:

CLOTURE MOTION

We, the undersigned Senators, in accordance with the provisions of rule XXII of the Standing Rules of the Senate, hereby move to bring to a close debate on the motion to concur in the House amendment to S. 990, with an amendment No. 347.

Harry Reid, Jack Reed, Carl Levin, Jeanne Shaheen, Mark R. Warner, Richard Blumenthal, Kent Conrad, Kirsten E. Gillibrand, Dianne Feinstein, Bill Nelson, John D. Rockefeller IV, Joseph I. Lieberman, Barbara A. Mikulski, Charles E. Schumer, Debbie Stabenow, Thomas R. Carper, Mark L. Pryor.

Mr. REID. I ask for the yeas and nays on my amendment.

The PRESIDING OFFICER. Is there a sufficient second?

There is a sufficient second.

The yeas and nays were ordered.

AMENDMENT NO. 348 TO AMENDMENT NO. 347

Mr. REID. I have a second-degree amendment at the desk.

The PRESIDING OFFICER. The clerk will report.

The legislative clerk read as follows:

The Senator from Nevada [Mr. REID] proposes an amendment numbered 348 to amendment No. 347.

The amendment is as follows:

At the appropriate place, insert the following:

This Act shall become effective 3 days after enactment.

MOTION TO REFER WITH AMENDMENT NO. 349

Mr. REID. I have a motion to refer the House message to the Senate Small Business Committee with instructions to report back forthwith with an amendment.

The PRESIDING OFFICER. The clerk will report the motion.

The assistant legislative clerk read as follows:

The Senator from Nevada [Mr. REID] moves to refer the House message to the Committee on Small Business with instructions to report back forthwith with an amendment numbered 349.

The amendment is as follows:

At the appropriate place, insert the following:

This Act shall become effective 3 days after enactment.

Mr. REID. On that motion, I ask for the yeas and nays.

The PRESIDING OFFICER. Is there a sufficient second?

There appears to be a sufficient second. There is a sufficient second.

The yeas and nays were ordered.

AMENDMENT NO. 350

Mr. REID. Mr. President, I have an amendment to my instructions which is also at the desk.

The PRESIDING OFFICER. The clerk will report.

The assistant legislative clerk read as follows:

The Senator from Nevada [Mr. REID] proposes an amendment numbered 350 to the instructions of the motion to refer.

The amendment is as follows:

In the amendment, strike "3" and insert "2".

Mr. REID. On that I ask for the yeas and nays.

The PRESIDING OFFICER. Is there a sufficient second?

There is a sufficient second.

The yeas and nays were ordered.

AMENDMENT NO. 351 TO AMENDMENT NO. 350

Mr. REID. I have a second-degree amendment to my instructions which is at the desk.

The PRESIDING OFFICER. The clerk will report.

The assistant legislative clerk read as follows:

The Senator from Nevada [Mr. REID] proposes an amendment numbered 351 to amendment No. 350.

The amendment is as follows:

In the amendment, strike "2" and insert "1".

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

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

Mr. REID. Mr. President, there will be no further rollcall votes tonight, 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. DURBIN. Mr. President, I ask unanimous consent that the order for the quorum call be rescinded.

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

AIRPORT AND AIRWAY EXTENSION ACT OF 2011, PART II

Mr. DURBIN. Mr. President, I ask unanimous consent, as if in morning business, the Senate proceed to the consideration of H.R. 1893, which was received from the House and is at the desk.

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

The legislative clerk read as follows:

A bill (H.R. 1893) to amend the Internal Revenue Code of 1986 to extend the funding and expenditure authority of the Airport and Airway Trust Fund, to amend title 49, United States Code, to extend the airport improvement program, and for other purposes.

There being no objection, the Senate proceeded to consider the bill.

Mr. DURBIN. Mr. President, I ask unanimous consent the bill be read three times and passed, the motion to reconsider be laid upon the table, with no intervening action or debate, and any statements be printed in the RECORD.

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

The bill (H.R. 1893) was ordered to a third reading, was read the third time, and passed.

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

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

PATRIOT SUNSETS EXTENSION ACT

Mr. MERKLEY. Mr. President, I rise to address the 4-year extension of the PATRIOT Act and to oppose that extension if the bill is not modified.

I want to take us back to the principles on which our Nation was founded and, indeed, before our Declaration of Independence and before our Constitution when there was a deep tradition of the right of privacy. Let's take William Pitt's declaration in 1763. He said:

The poorest may, in his cottage, bid his defiance to all the forces of the Crown . . . the storm may enter; the rain may enter. . . . But the King of England may not enter.

It is the philosophy embedded in William Pitt's declaration of the sanctity of a man's home that underwrote the principle of the fourth amendment. That reads as follows:

The right of the people to be secure in their persons, houses, papers, and effects, against unreasonable searches and seizures, shall not be violated, and no Warrants shall issue, but upon probable cause, supported by Oath or affirmation, and particularly describing the place to be searched, and the persons or things to be seized.

The fourth amendment is powerful protection of personal privacy from the overreach of government. How does

that compare in contrast to the PATRIOT Act that is before us?

Let me tell you the standard that is in the PATRIOT Act for the government to seize your papers, to search your papers, and that standard is simply "relevant" to an "investigation." Relevant to an investigation? That is the legal standard set out in the PATRIOT Act. That is a standard that was written to be as broad and low as possible. What does it mean to be "relevant" to an investigation? It certainly isn't something as strong as probable cause, which is in the fourth amendment. It certainly isn't describing the place to be searched, the persons and things to be seized. Indeed, the word "relevant" doesn't have a foundation of legal tradition that provides any boundaries at all.

Let's take the term "investigation." "Investigation" is in the eye of the beholder. I want to look into something, so that is an investigation. What happens to these words in the PATRIOT Act, in the section of the PATRIOT Act that addresses the sweeping powers to investigate Americans down to the books they check out, their medical records, and their private communications? Quite simply, there is a process in theory in which a court, known as the FISA Court, makes a determination, but they make the determination upon this standard—that this standard is "relevant to an investigation."

Now, the interpretation of that clause is done in secret. I would defy you to show me a circumstance where a secret interpretation of a very minimal standard is tightened in that secret process. But we don't know because we are not being told.

This is why I support Senator WYDEN's amendment. Senator WYDEN has said we should not have secret law—secret interpretation of clauses that may result in the opposite of what we believe is being done. That is a very important amendment. But that amendment will not be debated on the floor of the Senate. It won't be debated because a very clever mechanism has just been put into play to prevent amendments from being offered and debated on the floor of the Senate on the 4-year extension of the PATRIOT Act. Quite frankly, I am very disturbed by that mechanism—a parliamentary move in which a House message is brought over and the regular bill is tabled, and that message will then have the regular PATRIOT Act put into it as a privileged motion, and it will be returned to the House. The effect therein is, because the tree has been filled, which is parliamentary-speak for "no amendments will be allowed," we won't get to debate Senator WYDEN's amendment.

There are a number of Senators who have proposed to change this standard—the standard "relevant to an investigation"—to make it a legally significant standard and make sure it is not being secretly interpreted to mean almost nothing. But we won't have a