CERTIFICATE OF APPOINTMENT

The VICE PRESIDENT. The Chair lays before the Senate a certificate of appointment to fill the vacancy created by the death of the late Senator Daniel K. Inouye of Hawaii.

The certificate, the Chair is advised, is in a form suggested by the Senate. If there is no objection, the reading of the certificate will be waived and it will be printed in full in the RECORD.

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

EXECUTIVE CHAMBERS

Honolulu

CERTIFICATE OF APPOINTMENT

To the President of the Senate of the United States:

This is to certify that, pursuant to the power vested in me by the Constitution of the United States and the laws of the State of Hawai'i, I, Neil Abercrombie, the governor of said State, do hereby appoint Brian Schatz a Senator from said State to represent said State in the Senate of the United States until the vacancy therein caused by the death of Daniel K. Inouye, is filled by election as provided by law.

Witness: His excellency our governor Neil Abercrombie, and our seal hereto affixed at the Hawai'i State Capitol this 26th day of December, in the year of our Lord 2012.

By the governor:

NEIL ABERCROMBIE,
Governor.
BRIAN SCHATZ,
Lieutenant Governor.

[State Seal Affixed]

ADMINISTRATION OF THE OATH OF OFFICE

The VICE PRESIDENT. If the Senator-Designee will now present himself at the desk, the Chair will administer the oath of office.

The Senator-Designee, escorted by Mr. AKAKA and Mr. REID, advanced to the desk of the Vice President, the oath prescribed by law was administered to him by the Vice President, and he subscribed to the oath in the Official Oath Book.

The VICE PRESIDENT. Congratulations, Senator.

(Applause, Senators rising)

The PRESIDENT pro tempore. The majority leader.

WELCOMING SENATOR BRIAN SCHATZ

Mr. REID. Mr. President, on behalf of the entire Senate, I welcome Senator BRIAN SCHATZ to the Senate. I congratulate him on his appointment to fill the seat of the late Senator Dan Inouye who, as we all know, was an institution in and of himself.

Senator SCHATZ is now one of the youngest Senators in this body. Nevertheless, he has a long history of serving the State of Hawaii. Prior to entering politics, Senator SCHATZ served for 8 years as the CEO of Helping Hands Hawaii, one of Hawaii's largest nonprofit social services organizations. He also served four terms in the Hawaii House of Representatives and served until just a few minutes ago as the Lieutenant Governor of the State of Hawaii.

Having been a Lieutenant Governor he has experience as a legislator, and then as one of the presiding officers of the entire Senate, speaks for itself in helping to prepare for the job he has here. I expect he will build upon the foundation laid by Senator Inouye in the Senate. While no one can fill the shoes of our friend Senator Inouye, BRIAN SCHATZ is a young man with a future full of promise and opportunity.

I ask unanimous consent that the Senator from Hawaii, Mr. AKAKA, now be recognized.

The PRESIDENT pro tempore. The senior Senator from Hawaii is recognized.

Mr. AKAKA. Mr. President, I rise to welcome Hawaii's new Senator, BRIAN SCHATZ. BRIAN is a leader for Hawaii's present and for our future and I welcome him with much aloha pumehana, which means warm love.

I also welcome and congratulate Senator SCHATZ's wife Linda; their children, Tyler and Mia; his twin brother, and Senator SCHATZ's proud parents, Dr. Irwin and Mrs. Barbara Schatz.

Senator SCHATZ arrives in Washington during a sad time as we continue to mourn the loss of our champion, Senator Dan Inouye. Dan Inouye will always be a legend in Hawaii. He will never be replaced.

At Dan Inouye's memorial service in Honolulu this past weekend, I was reminded of how many people he touched in Hawaii and across the country. We must honor his legacy by working together for the people of Hawaii.

I thank BRIAN for volunteering for this incredible responsibility. He only learned of his appointment yesterday and did not have any time to spare, so he hopped on Air Force One and flew straight to Washington to be sworn in today.

We need him here now because we are facing a major challenge, one that regrettably has been created by Congress in our own inability to thus far compromise. The looming spending cuts and tax increases known as the fiscal cliff must be fixed within the next 5 days.

Mahalo—thank you—BRIAN, for accepting this challenge.

I am here to help Senator SCHATZ in any way I can. While there are other talented leaders in Hawaii who stepped forward and who would also have been excellent appointees, I know my colleagues will join me in supporting Senator BRIAN SCHATZ for the good of Hawaii.

Throughout my 36-year career in Congress, the Hawaii delegation has always been unified. We have always put Hawaii first before our individual ambition. We must continue that. Hawaii comes first.

I have followed BRIAN SCHATZ's career for many years. He was an active member of the Hawaii State House of Representatives for 8 years before becoming the CEO of Helping Hands Hawaii, a nonprofit organization that provides human services in the islands. As Lieutenant Governor, he has been a big part of our community. He has been an outspoken supporter of our troops and veterans and defender of our environment.

Senator SCHATZ will be a strong progressive voice for Hawaii in the Senate. He will advance freedom and equality. He will be a strong voice on climate change, expanding clean renewable energy, and protecting our precious natural resources. He will defend our Native Hawaiians and all our Nation's first people—those Americans who exercised sovereignty on lands that later became part of the United States. He will uphold the values and priorities of our unique State.

I say to my friend, the new junior Senator from Hawaii, never forget that he is here with the solemn responsibility to do everything he can to represent the people of Hawaii, to make sure their needs are addressed in every policy discussion, and to speak up and seek justice for those who cannot help themselves.

God bless you, Senator SCHATZ. God bless Hawaii. God bless the United States of America.

The PRESIDENT pro tempore. The Senator from Nevada.

Mr. REID. Mr. President, before my friend from Hawaii leaves the floor, we have all come and given speeches—a lot of us, at least—about Senator AKAKA, but we have not had a lot of people on the floor when we have done that.

The presentation just now is typical for DAN AKAKA: never a word about himself, always about somebody else. If the new Senator has Senator AKAKA's qualities—the kindest, gentlest person I have ever served in this body with—it is something for which he should strive. The shoes he has to fill, we all know—AKAKA and Inouye—are significant to fill, but he can do that.

For you, Senator AKAKA—with these people on the floor—we are going to miss you so much. You are a wonderful human being and have been a great Senator.

Mr. AKAKA. I yield the floor, Mr. President.

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

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

The legislative clerk proceeded to call the roll.

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

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

FISA AMENDMENTS ACT REAUTHORIZATION ACT OF 2012—Continued

COMMENDING THE PRESIDENT PRO TEMPORE

Mr. BLUNT. Mr. President, also on two things that do not relate to my

comments about the Foreign Intelligence Surveillance Act—I would like to say it is a great honor for me to be able to speak on the floor for the first time with the President pro tempore presiding over the Senate. I know he is going to lead this body well and he has served with great dignity. It is an honor to be here with him on this day, even if it is December 27, 2012, and even though we are, of course, all continuing to think about the former President pro tempore and the services for him that were just completed.

TRIBUTES TO DEPARTING SENATORS

DANNY AKAKA

I would also like to say I was here when the new Member from Hawaii was sworn in and listened to Mr. AKAKA's comments. I have great respect for him and the quiet dignity he brings to everything he does—from weekly demonstrations of his personal faith, which I share with him, to his name being mentioned first in all these quorum calls that have gone on now for, I assume, all the time he has been in the Senate, going back to 1981.

But we will miss him, as we will miss his colleague from Hawaii, and we welcome his new colleague today. I get to welcome you personally, Mr. President, with heartfelt appreciation, as the new President pro tempore of the Senate.

Following that, I wish to speak on the importance of extending the Foreign Intelligence Surveillance Act, the Amendments Act, I think it is called.

While I was serving in the House in 2008, the Foreign Intelligence Surveillance Act had lapsed, and we were not doing the things we should be doing. I was able there to work with my good friend STENY HOYER, who was the majority whip at the time. I was the minority whip at the time. We had held the reverse of those jobs in the previous Congress. I liked my role as majority whip better. But Mr. HOYER and I were able to work together, particularly with my predecessor from Missouri, Senator Bond, and Senator ROCKEFELLER—Senator Bond was the vice chairman of the Intelligence Committee; Senator ROCKEFELLER was the chairman—as we tried to negotiate how we would extend the FISA Amendments Act.

My colleagues here today—many of them remember the challenge we faced in getting that bill done. Many of them, including the current chairman of the Senate Intelligence Committee, know the importance we placed on the work that is done every day under the Foreign Intelligence Surveillance Act.

At the time in 2008, we had a very concrete set of examples of what would happen without FISA because, frankly, we were effectively without it. For periods of time in 2007 and 2008, the National Security Agency was unable to fully perform its mission in monitoring many of the activities of known terrorists who were overseas and particularly found it impossible to focus in on new targets—and, again, those are known terrorists not in this country.

It was wrong that Congress allowed the act to lapse, and it would be dangerously wrong if we let it happen again on December 31 of this year.

Five years ago, I sat through many disturbing intelligence briefings. I remember the sense of urgency expressed by the then-Director of National Intelligence Mike McConnell; the then-CIA Director Michael Hayden; and the then-Attorney General Michael Mukasey, as they discussed the consequences we would have to deal with if we continued not to move forward and put this act back in place.

The agreement we reached balanced the concerns of those who feared the National Security Agency had overreached with the ongoing authority the intelligence community needed to protect the country. That agreement is before us again to be reauthorized for another 5 years.

The FISA Amendments Act protects individuals in the United States from so-called reverse targeting. It is one of the concerns people had 5 years ago. This would be a process which, in theory, could be used to monitor the communications of American citizens under the guise of spying on terrorists.

It also continues to ensure that any communication originating in the United States caught in the FISA process is minimized. What does that mean? It means it is handled in a way that American communications cannot be examined unless they have further justification.

Meanwhile, the bill updated the antiquated way we monitor terrorist communications, ensuring that our intelligence professionals no longer have to spend countless hours trying to figure out whether an overseas terrorist's communications are traveling over fiber optic wires or through a satellite.

I am concerned the amendments we are looking at here not only disrupt the delicate balance we struck in 2008 but also they may mean that this act does not get extended. The House has voted on a straight extension. The only thing standing between the continuation of that 2008 hard-fought and I think properly balanced agreement is a Senate vote on what the House has passed. I will be voting against the amendments. I think some of these amendments are well intended and, in fact, if they were not part of this bill, studies and other things that are being proposed might very well be worth doing but not worth doing in a way that would allow FISA to expire in just a few short days.

I am pleased to have been able to serve on both the Senate and the House Select Committees on Intelligence and have witnessed firsthand the important role that FISA plays in protecting our country.

I am thankful for the intelligence professionals who serve our country, both in the United States and overseas. I hope, as they observe this debate we are having about FISA, they see a Congress that supports them, supports their families, and supports their important work.

Unless the world changes—and, hopefully, it will change—we should never allow our ability to track terrorists overseas to go dark again. That is why it is critically important we pass this bill in the next few hours, why we extend FISA for another 5 years, and give our intelligence professionals the tools they need to protect our country and, frankly, give the Congress, the President, and, most importantly, the American people the obligation to look at this authority again in 5 years and see if we still need it.

Today, we need to extend the Foreign Intelligence Surveillance Act. I hope we do that.

I yield the floor.

The PRESIDING OFFICER (Mrs. SHAHEEN). The Senator from Colorado.

Mr. UDALL of Colorado. Madam President, I would be happy to defer to the vice chairman.

The PRESIDING OFFICER. The Senator from Georgia.

Mr. CHAMBLISS. Madam President, I rise today in support of H.R. 5949, the FISA Amendments Act Reauthorization Act of 2012. Before I speak on it as vice chairman of the Intelligence Committee, I wanted to say that this bill, along with many other products that have come out of the Intelligence Committee, has been put together in a strong bipartisan way under the leadership of our chairman Senator FEINSTEIN, who has been a great advocate for the national security of the United States and a great advocate for our men and women in the intelligence community. I would be remiss if I did not say as we conclude this year, which is the second of the 2 years I have been vice chair, what a privilege and pleasure it has been to work with her. I thank her for her leadership and all of the issues we have worked on together.

This bill, which passed the House with broad bipartisan support, provides a clean extension of the FISA Amendments Act until December 31, 2017. Earlier this year, with strong bipartisan support, the Senate Intelligence Committee also reported the bill with a clean extension, although it had a slightly earlier sunset of June 1, 2017. So we have two bills—one from each Chamber—that recognize that the FAA must be reauthorized for the next 5 years. Both bills also confirm that there should be no substantive changes to the FAA itself. But time is running short before these vital authorities expire, as they expire on December 31. So it makes the most sense for the Senate to simply pass the House bill and send it to the President for his immediate signature so that we have no gap in collection on those who seek to do us harm, as they are out there every day seeking to do that.

As we debate the merits of passing a clean extension of the FAA, I think it is important to remember why the FAA is so necessary. The terrorist attacks by al-Qaida on September 11,

2001, highlighted a significant shortfall in our ability to collect foreign intelligence information against certain overseas targets. Our intelligence community took operational measures to address that shortfall but eventually realized that additional FISA authorities were needed to fully address the problem.

More than 5 years ago, after an adverse ruling from the Foreign Intelligence Surveillance Act Court, the Director of National Intelligence requested that Congress act immediately to stem the sudden and significant reduction in the intelligence community's capability to collect foreign intelligence information on overseas targets. So Congress responded—first with the Protect America Act of 2007 and then with the FISA Amendments Act of 2008. By providing a statutory framework for acquiring foreign intelligence information from overseas targets, the FAA has enabled the intelligence community to identify and neutralize terror networks before they harm us either at home or abroad.

While I cannot get into specific examples, I can say definitively that these authorities work extremely well. I encourage all of my colleagues to go to the Intelligence Committee's spaces and review the classified materials provided by the intelligence community. These materials give the classified examples that clearly demonstrate the FAA's success.

Let me briefly highlight what some of those authorities do. Under section 702, the government may target persons reasonably believed to be outside the United States for the purpose of acquiring foreign intelligence information. However, there are a number of important limitations on this authority that are designed to ensure that this section 702 collection cannot be used to intentionally target a U.S. person under what we call reverse-targeting within the community. These acquisitions are authorized jointly through a certification by the Attorney General and the Director of National Intelligence and are approved by the FISA Court.

The plain language and legislative history of section 702 makes clear that Congress understood there would be incidental collection of one-end domestic and U.S. person communications. There has to be. If we impose an upfront ban on the collection of such communications, we could never do the acquisition in the first place because it is often impossible to determine in advance whether an unknown target overseas is, in fact, a U.S. person. So we need the broad ''any person'' authority at the outset to ensure that the acquisition can occur in the first instance. Moreover, Congress also understood that this incidental collection would likely provide the crucial lead information necessary to thwart terrorists like the 9/11 hijackers who trained and launched their attacks from within the United States. But because of legitimate concerns about the privacy of U.S. persons, Congress also placed specific safeguards on section 702 collection, including review and approval by the FISA Court of the AG-DNI certification and targeting and minimization procedures, a requirement that all acquisitions be consistent with the fourth amendment, and explicit prohibitions against certain conduct, such as intentionally targeting a U.S. person.

Because there are instances, however, in which we may need to target U.S. persons overseas who have betrayed their country as terrorists or spies, the FAA does include specific ways to do this. Similar to the authorities in title I of FISA, sections 703 and 704 allow the FISA Court to authorize collection against certain U.S. persons overseas. Before the FAA, this type of collection was authorized by the Attorney General and not by a court. The FAA enhanced the protections for U.S. persons by requiring individual FISA Court orders based on probable cause that the U.S. person is a foreign person, agent of a foreign power, or an officer or employee of a foreign power. As I understand it, most of the objections to the FAA relate to section 702 and what we call incidental collection.

I recommend again that my colleagues review the unclassified FAA background paper that was sent by the AG and by the DNI to Congress last February. That document was earlier made a part of the RECORD at my request. This paper describes the FAA authorities in some detail, and it highlights the layers of oversight by all three branches of government. These multiple oversight mechanisms are there primarily to protect U.S. persons.

I can tell you firsthand from my work on the Intelligence Committee on both the House and the Senate side that it is vigorous oversight. Every aspect of the FAA gets looked at closely by the executive branch, from the dedicated personnel responsible for operating the system, up through the managerial chain of command to the relevant inspectors general and all of the lawyers at the National Security Division at the Department of Justice and at the agencies responsible for FAA implementation. Twice a year, Congress gets reports on its implementation on top of what we learn from hearings, oversight visits, briefings, and notifications, as well as other reports that are given to Congress. The judicial branch, the FISA Court, plays its own key role by reviewing the certifications and the targeting and minimization procedures and ensuring that all of those comply with the law.

I cannot say that the implementation of the FAA has been perfect. Certainly there have been a few mistakes along the way over the past several years. Sometimes technology does not always work the way it is supposed to, and sometimes there is a disconnect between the way a collection device actually works and the way it has been described by the lawyers. But I can tell you that on those few occasions where something has not been quite right with how these authorities have been used, the oversight mechanisms put in place by the FAA have worked exactly as intended by Congress. When a problem arises, the Justice Department knows about it, the FISA Court knows about it, and Congress knows about it. The collection related to the problem stops until the problem gets fixed.

In my experience, the FAA is one of the most tightly overseen activities within the intelligence community. I know some people believe more oversight is needed, but I do not think there is justification for that. I am concerned that if we add more IG reviews, for example, we run the risk of taking scarce resources away from actual analysis and operations. That is not the right course, especially when we know the existing oversight mechanisms are working so well. These FAA authorities are simply too important to lose.

We have a bill before us that has passed the House and can be sent straight from this body to the White House for signature by the President. The President has said he will sign the House bill as soon as he receives it from this body. I urge my colleagues to join me in voting for a clean extension of the FISA Amendments Act until December 31, 2017.

I yield the floor.

The PRESIDING OFFICER. The Senator from Colorado.

Mr. UDALL of Colorado. Madam President, I ask unanimous consent to speak for up to 30 minutes and that be under the time allotted to Senator WYDEN.

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

Mr. UDALL of Colorado. Madam President, I rise, as many have today, to talk about the Foreign Intelligence Surveillance Act. Before I get to the substance of my remarks, I wish to acknowledge the great leadership and work that both the chairwoman and the vice chairman provide for the committee. We would not be here today without their focus and their commitment to maintaining the best intelligence community, I believe, in the world. I also want to thank my colleague Senator WYDEN and the others who have spoken today on the floor about the authorities under the FISA Amendments Act.

I would suggest that most Americans likely do not recognize the name of the bill, but I am certain they have heard about what this bill addresses; that is, government surveillance of communications. This is an issue that is critical to get right because if it is done wrong, it can strike at the core of our constitutional freedoms. So I wanted to thank our Senate leadership today for providing us time to discuss what is a very important issue. I might suggest that the topic at hand is important

enough to require multiple days of debate, but given the gravity and the number of other issues we must confront before the end of the year, I am grateful for this debate and the discussion we are having for most of this day.

Some observers may even question why we are taking even this limited amount of time to debate a bill we here in the Senate expect to pass easily. The truth is that even though many Senators are likely to vote for this bill, it is incomplete and it needs reforms. In fact, part of the reason this debate is so important is because I believe Congress and the public do not have an adequate understanding of the effect this law has had and could have on the privacy of law-abiding American citizens.

This is an important subject. It is an important question. That is why a number of us have taken to the floor today to spend some time highlighting the issues at hand in the hopes our colleagues will join us in striking the right balance, one that preserves foundational values and constitutional liberties while still allowing us to effectively and forcefully prosecute our war on terror.

I was a Member of the House in 2008 when the FISA Amendments Act passed Congress and was signed into law. I voted for it then, along with most of my Democratic colleagues in the House.

In March 2008 many of us in the House viewed the FISA Amendments Act—or the FAA, in shorthand—as an improvement over the status quo. Why was that so? It was because it put a legal framework around President Bush's warrantless wiretapping program and it updated the Foreign Intelligence Surveillance Act—or FISA, as it is known in shorthand—to respond to changes in technology and to hold that administration accountable.

As I noted 4 years ago during that debate, the bill also included important provisions that for the first time required intelligence agencies to seek a judge's permission before monitoring the communications of Americans overseas. That meant the Federal Government could no longer monitor the e-mail or phone calls of Americans overseas without a warrant.

In my remarks, I am going to talk on a number of occasions about warrants and the check they provide on government overreach. That was an important part of that debate in 2008. Back in that year, back in 2008, it was Senator WYDEN, who is here on the floor today, who was instrumental in including that particular provision in the final FISA Amendments Act legislation. From the perspective of a House Member at that time, I was pleased, glad, and appreciated that we had Senator WYDEN's leadership right here in the Senate.

I now have the great privilege to serve on the Senate Intelligence Committee with Senator WYDEN. I have to admit that from the position I now have, I am viewing the FISA Amendments Act through a different lens. As a member of that committee, I learned a great deal more about our post-9/11 surveillance laws and how they have been implemented. In the course of my 2 years on the committee, I have determined that there are reforms that need to be made to the FISA Amendments Act before we renew it into law.

As we prepare to renew the FISA Amendments Act for the first time since 2008, it is important that we take this opportunity to address several flaws that have become apparent to me and a number of our colleagues. Fortunately, the sunset provision in the original bill effectively provides us with that opportunity so that today we can ensure that the statute still tracks with our foreign intelligence requirements and the interests of the American people. In addition, to remain an effective law, the sunset provision helps ensure that the FISA Amendments Act's authorities keep up with today's state of technology.

Let me be clear that I strongly believe that for our national security, the Federal Government needs ways in which to monitor communications to ensure that we remain a step ahead of our enemies and terrorists. I also strongly believe we need to balance the civil liberties embodied in our Constitution with our ongoing fight against terrorists.

We need only look to recent history to understand why Congress needs to keep a tight rein on these surveillance efforts. It was in the months after 9/11, just shortly after 9/11 that President Bush first authorized what we now refer to as the secret warrantless wiretapping program. Many legitimate concerns were raised about that program, and Congress wisely went back and put some limits on it in that 2008 law. But we have an opportunity to discuss today whether those limits went far enough and whether the circumstances that prompted the creation of the program in 2001 and its passage into law in 2008 still justify its existence today.

I am a member of both the Armed Services and Intelligence Committees, and I will be the first to say that terrorism remains a serious threat to the United States, and we must be as diligent as ever in protecting our fellow American citizens. I can also say with confidence that the FISA Amendments Act has been beneficial to the protection of our national security.

In the Senate Intelligence Committee, I receive regular briefings on our efforts to combat terrorism abroad and here at home in the United States, including the benefits and accomplishments of the FISA Amendments Act. I think the threats—I should say I not only think, I know the threats we still face today do justify the extension of these authorities. I don't question the value of the foreign intelligence the FAA provides. But my question to my colleagues and the administration is whether a 5-year straight extension of these authorities, without any changes, is the best way forward. In my view, it is not.

I recognize that even after Osama bin Laden's death, we still face numerous threats. Make no mistake about it, terrorism is a serious threat to our homeland and to American lives, and terrorism has also forced us to have a conversation about our civil liberties and the balance between our privacy and the need to confront threats to our Nation. I strongly believe our commitment to protect the American people should not force us to abandon the foundational principles that make us a beacon for the rest of the world. This is a false choice. We must, as the Federal Government and the protectors of our Constitution, protect the constitutional liberties of the American people and live up to the standard of transparency our democracy demands.

As I mentioned, I am the only Senator on our side of the aisle who serves on both the Intelligence Committee and the Armed Services Committee, and I believe I have a unique perspective when evaluating the critical balance between protecting our national security and the rights of American citizens. It is the responsibility of Congress to find that balance between the will of the many and the rights of the few, the security of the country and the freedom of its citizens. In times of war and crisis, finding this balance—and it is a delicate balance—can be even more challenging, and there are unfortunate times in our Nation's history when we have lost sight of our principles and what the United States represents as a nation.

I understand that the law requires the intelligence community to conduct oversight of FAA implementation, that the Foreign Intelligence Surveillance Court reviews the legality of the procedures, and that the congressional Intelligence Committees conduct our oversight of FISA programs. But nearly all of this oversight is conducted in secret. I know my constituents trust me to conduct this oversight, but I believe the people too have a role in keeping a watchful eye on the government.

As Senators ROCKEFELLER and WYDEN wrote in a letter to the Bush administration officials in 2008, ''secrecy comes with a cost'' which can—and I want to quote these two valued and wise Senators—''make it challenging for Members of Congress and the public to determine whether the law adequately protects both national security and the privacy rights of law-abiding Americans.''

With that general overview, I wish to talk about some of the specifics in this particular bill we are considering today. I would like to get to the core of my concerns.

As my colleagues know, section 702 of the FISA Amendments Act established a legal framework for the government to acquire foreign intelligence by targeting non-U.S. persons who are reasonably believed to be located outside

the United States under a program approved by FISA and the FISA Court, I should add. Because section 702 does not involve obtaining individual warrants, it contains language specifically intended to limit the government's ability to use these new authorities to deliberately spy on American citizens.

Earlier this year Senator WYDEN and I opposed the bill reported out of the Senate Intelligence Committee extending the expiration date of the FISA Amendments Act of 2008 from December 2012 to June 2017. We opposed this long-term extension because we believe Congress does not have an adequate understanding of the effect this law has had on the privacy of law-abiding citizens. In our view, it is important for Members of Congress and the public to have a better understanding of the foreign intelligence surveillance conducted under the FAA so that Congress can consider whether the law should be modified rather than simply extended without changes.

This has been a longstanding quest for a number of us. In fact, while I have been outspoken on this issue, the effort to better understand the FAA's implementation precedes my time on the Senate Intelligence Committee. Senator WYDEN and others have been pressing the intelligence agencies for years to provide more information to Congress and the public about the effect of this law on Americans' privacy.

I think Senator WYDEN and the others would agree with me that to his credit, the Director of National Intelligence in July 2012 agreed to declassify some facts about how the secret FISA Court has ruled on this law. So what did we learn from that declassification? Well, specifically, it is now public information that on at least one occasion, the FISA Court has ruled that some collection carried out by the government under the FISA Amendments Act violated the fourth amendment. The court has also ruled that the government has circumvented the spirit of the law.

So much about this law's impact remains secret. What do I mean by that? Well, for example, Senator WYDEN, I, and others have been trying to get a rough estimate of how many Americans have had their phone calls or e-mails collected and reviewed under these authorities. The Office of the Director of National Intelligence told us in July 2011 that ''it is not reasonably possible to identify the number of people located in the United States whose communications may have been reviewed'' under the FISA Amendments Act.

We are prepared to accept that it might be difficult to come up with an exact count of this number, but it is hard for us to believe that the Director of National Intelligence and the whole of the intelligence community cannot come up with at least a ballpark estimate. This is disconcerting. Our concern about numbers is this: If no one has even estimated how many Americans have had their communications collected under the FISA Amendments Act, then it is possible that this number could be quite large.

So how did we respond? Well, during a markup in our committee, we offered an amendment that would have directed the inspectors general of the intelligence community and the Department of Justice to produce a rough estimate of how many Americans have had their communications collected under section 702. Our amendment did not pass, but we will continue our efforts to obtain this information because the American people deserve to know.

There are those who are satisfied with the law's current privacy protections, and they point out that classified minimization procedures guide how government officials handle information on Americans' communications. But I don't believe those procedures are a substitute for strong privacy protections incorporated into the law itself. Do we really want accountability for those protections to be secret? Do we really want to be dependent upon the good will of future administrations to keep faith with the so-called minimization procedures?

That is why I believe the FISA Amendments Act extension should include clear rules prohibiting the government from searching through the incidental or accidental collection of these communications unless the government has obtained a warrant or emergency authorization permitting surveillance of that American. Our founding principles demand no less.

Senator WYDEN and I offered an amendment during the committee's markup of this bill that would have clarified the law to prohibit such searches. Our amendment included exceptions for searches that involve a warrant or an emergency authorization, as well as for searches on phone calls or e-mails of the people who are believed to be in danger or who consent to the search, each of which is important.

Our amendment to close this backdoor search loophole did not pass in committee, but we remain concerned—I would say very concerned—that this loophole could allow the government to effectively conduct warrantless searches for Americans' communications. Especially since we do not know how many Americans may have had their phone calls and e-mails collected under this law, we believe it is particularly important to have strong rules in place to protect the privacy of our fellow Americans.

As the majority report noted when the Senate bill passed out of the committee: ''Congress recognized at the time the FISA Amendments Act was enacted that it is simply not possible to collect intelligence on the communications of a party of interest without also collecting information about the people with whom, and about whom, that party communicates, including in some cases nontargeted U.S. persons.''

Therefore, I understand that in scooping up large amounts of data, it may be impossible not to accidentally catch some Americans' communications along the way—seems logical. The language of the law—the collection of foreign intelligence of U.S. persons reasonably believed to be located outside the United States—anticipates that incidental or accidental collection of Americans' e-mails or phone calls would, in fact, occur. But under the FISA Amendments Act, as it is written, there is nothing to prohibit the intelligence community from searching through a pile of communications, which may have incidentally or accidentally been collected without a warrant, to deliberately search for the phone calls or e-mails of specific Americans.

Again, I understand—and I think I can speak for Senators WYDEN and others of us who have this concern—this could happen by accident. But I don't think the government should be doing this on purpose without getting a warrant or an emergency authorization regarding the American they are looking for.

I have noted that Senator WYDEN and I call this the backdoor searches loophole. Understandably, the Intelligence Committee doesn't much like that term, arguing there is no loophole. But I think we are going to have to agree to disagree on the terminology. I don't believe, though, that Congress intended to authorize the searches when they voted for the FISA Amendments Act in 2008. I know I certainly didn't.

The intelligence agencies have not denied that section 702 gives the NSA the authority to conduct these searches, and it is a matter of public record the intelligence community has sought to preserve this authority. If it is not classified that intelligence agencies have this authority and it is not classified they would like to keep it, we think it is reasonable to tell the public whether and how it has ever been used. Yet when Senator WYDEN and I and 11 other Senators asked whether intelligence agencies have already done this, we were told the answer was classified.

My concern is that this section 702 loophole could be used to circumvent traditional warrant protections and search for the communications of a potentially large number of American citizens. The Senate Intelligence Committee majority report argues there may be circumstances in which there is a legitimate foreign intelligence need to conduct queries on data already in its possession, including data from accidentally or incidentally collected communications of Americans. I would argue, if there is evidence that an American is a terrorist or spy or involved in a serious crime, the government should be permitted to search for the communications of that American by getting a warrant or an emergency authorization.

In that spirit, Senator WYDEN and I have offered this backdoor searches

loophole amendment once again to this bill, and we intend to continue to bring attention to this issue until our colleagues grasp what could be at stake should this loophole not be closed. We have also filed a second amendment which seeks to instill some transparency to surveillance conducted under FISA Amendments Act authorities.

What is included in this amendment? It requires the Director of National Intelligence to provide information to Congress that we have requested before but that we have not yet received, including a determination of whether any government entity has produced an estimate of the number of U.S. communications collected under the FISA Amendments Act; an estimate of such number, if any exists; an assessment of whether any wholly domestic U.S. communications have been collected under the FISA Amendments Act; a determination of whether any intelligence agency has ever attempted to search through communications collected under the FISA Amendments Act to find the phone calls or e-mails of a specific American without obtaining a warrant or emergency authorization to do so; and finally, a determination of whether the NSA has collected any type of personally identifiable information on more than 1 million Americans.

The amendment states the report produced by the Director of National Intelligence shall be made available to the public, but it gives the President the authority to make any redactions he believes are necessary to protect national security.

Colleagues, I am going to conclude by restating my belief that the American people need a better understanding of how the FISA Amendments Act, section 702, in particular, has affected the privacy of our fellow Americans. I also believe we need new protections against potential warrantless searches for Americans' communications. I believe without such reforms Congress should not simply extend the law for 5 years.

We need to strike a better balance between giving our national security and law enforcement officials the tools necessary to keep us safe but not damage the very constitution we have sworn to support and defend. National security and civil liberties can coexist. We do not need to choose between them.

In Federalist 51, James Madison stated—and I would like to quote that great American:

> In framing a government which is to be administered by men over men, the great difficulty lies in this: you must first enable the government to control the governed; and in the next place oblige it to control itself.

The bill that is before us could come closer to that standard if we improve it through some of the amendments being offered by my colleagues and me, but it does not live up to that standard now. The American people deserve their privacy, they deserve to know how the intelligence community interprets and implements this law, and, frankly, they deserve better than the protections put before us today.

I urge my colleagues to consider the gravity of the issues at hand and seriously consider and contemplate the effect of another 5 years of unchanged FAA authorities.

I appreciate the attention of the Chair and the patience of my colleagues on this important matter. 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.

Mrs. FEINSTEIN. Madam President, I ask unanimous consent that the order for the quorum call be rescinded.

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

Mrs. FEINSTEIN. Madam President, I note the Wyden amendment has not yet been called up. Someone may wish to do so.

First of all, though vice chairman CHAMBLISS isn't here, he said some very nice things, and I just want him to know that one of the best experiences of my Senate career has been the ability to work in a bipartisan way in the Intelligence Committee, to put things together between both sides, and to have staffs working together on both sides. Sometimes that isn't possible, but most of the time it is, and I think it is the way the Intelligence Committee was supposed to function. The fact that it does function that way, I think, is real testimony to Vice Chairman CHAMBLISS and the work we have done together.

I find this particular amendment very frustrating because I have tried to be as helpful as I could over many years in getting information released in a classified form for Members of the committee. In fact, we have been very successful in that regard. There are approximately eight big reports a year now that present information in a classified function. There are two reports from the Attorney General and the DNI assessing compliance with the targeting and minimization procedures and the acquisition guidelines of section 702. There are also reports required on the implementation of title VII. That report includes actions taken to challenge or enforce a directive under section 702, and a description of any incident of noncompliance. There are annual reviews by each agency responsible for implementing these sections, regular reviews by the IG of the Department of Justice and the IG of each agency. It goes on and on and on. Yet there is no satisfaction from some Senators.

I believe that the Senators who support this amendment are trying to maximize the public release of this information, but I would encourage Senators to remember that this is a classified program. The information is available, but it is available in classified form.

The proponents of these amendments leave out the fact that each year the program is approved by the FISA Court. This is a court of 11 judges appointed by the Chief of the Supreme Court, all of whom are Federal district court judges.

The administration has decided the program should remain classified, and so we do our level best to provide the information on a classified basis and information is declassified when it can be. But the Wyden amendment goes a step too far. It could remove the classification from most of this program and create a way to make more information public that could well jeopardize the future of the program.

I think vice chairman CHAMBLISS would agree with me. One of the things we have seen is that this program is valuable, and the ability to collect intelligence and use that intelligence wisely and, with oversight from appropriate agencies, this program saves lives in this country. I know there are people trying to attack this country all the time. I know in the last 4 years there have been 100 terrorism-related arrests. Therefore, the classified information, which is available—but available in a secure room for Members to read—is important. I would urge, as vice chairman CHAMBLISS has urged, that Members go and read this information.

I would like to quote from the letter sent to Speaker BOEHNER, Leader REID, and Minority Leaders PELOSI and MCCONNELL from the Director of National Intelligence on this provision, section 702, which authorizes surveillance directed at non-U.S. persons located overseas who are of foreign intelligence importance. The letter says all of the process—and it is pages and pages—is carried out in a classified form but to inform the Members who are the ones to provide the oversight. I mean, we are the public check on the Executive Branch. We are not of the intelligence community. We are the public, and it is our oversight, it is our due diligence to go in and read the classified material.

So this amendment is an effort to make more of that information public, and I think it is a mistake at this particular time because I think it will create a risk to the program. I think it will make us less secure, not more secure.

There are parts of the collection apparatus which are classified, and at this stage they are classified for good reason. So I have a fundamental opposition to this amendment. But of more immediate concern, we have 4 days to get this bill signed by the President or this section ceases to function—4 days.

This is the House bill that is before us. It reauthorizes the program to 2017, and we have been through this before. We can make changes. I have tried to work with Senator WYDEN, to the greatest extent possible, by delving

into these issues at hearings of the Intelligence Committee and by supporting his requests for information. I have offered to Senator MERKLEY today to work with him to consider whether his proposal should be part of our intelligence authorization bill next year. I don't know what else to do because I know where this goes, and where it goes is that there may be an intent by some to undercut the program. I don't want to see it destroyed. I want to see us do our job of oversight, which means reading and studying the classified material and, if something isn't there, getting it in a classified manner.

This is a very difficult issue that requires a great deal of study. And consider the threats that are out there. If it weren't for the FBI, Najibullah Zazi would have blown up the New York subway and it was because of intelligence received that the FBI was able to follow him and eventually arrest him and other co-conspirators.

If I thought this country was out of danger, it might be different. But I believe we are still at risk, and I believe there are people who will kill Americans if they have the opportunity to do so. One of our jobs here in Congress is to see that the intelligence apparatus within the American Government functions in a way so that intelligence is streamlined, that it gets to the right place, that it stops terrorist plots before they can be carried out.

So, I say this in good conscience to Senator WYDEN. My great fear is that all of this information gets declassified and put out in public and then something that reveals sources and methods is disclosed, perhaps even inadvertently. Then, before we know it, the program is destroyed. I don't want to see this program destroyed.

The PRESIDING OFFICER. The Senator from Oregon.

Mrs. FEINSTEIN. I believe his time is up.

Mr. WYDEN. Madam President, I believe I control additional time. How much time does our side have remaining?

The PRESIDING OFFICER. There is 39 minutes of general debate time remaining to the Senator from Oregon.

Mr. WYDEN. Madam President, I am going to be very brief in terms of responding to Senator FEINSTEIN, the distinguished chair.

First of all, there is no question the chair of the committee is correct that this is a dangerous time. That is specifically why, at page 6 of my amendment on the report, I include a redaction provision.

If the President believes that public disclosure of information in the report required by the subsection could cause significant harm to national security, the President may redact such information from the report made available to the public.

The bottom line: If the President believes any information that is made public would jeopardize our country at a dangerous time, the President is given full discretion with respect to redaction.

Point No. 2. The chair of the committee is absolutely right; this is an important time for national security. It is also an important time for American liberties. We know the people of this country want to strike a balance between protecting our security and protecting our liberties. So under the reporting amendment all we require is, first, an estimate, just the question of an estimate and whether it has been done by any entity with respect to collecting this information—no new work, just a response to the question of whether an estimate has been done.

Second, we request information on whether any wholly domestic communications have been collected under section 702, and then we ask whether there have been any backdoor searches under the legislation. Finally, we want a response with respect to what the Director of National Security meant when he said: ''The story that we have millions or hundreds of millions of dossiers on people is absolutely false.''

That is what we are talking about. I think, without that information, oversight in the intelligence field will essentially be toothless. This interrupts no operations in the intelligence field. It does not jeopardize sources and methods. It is, in my view, the fundamentals of doing real oversight.

I thank my colleague from Kentucky for giving me this time, and I close by saying: No disagreement with the distinguished chair in the fact that there are real threats to this country's well-being and security, and that is why the President is given complete discretion in order to redact any information that would be made public.

I yield the floor, and I thank the Senator from Kentucky for the time.

The PRESIDING OFFICER. The majority leader.

Mr. REID. Madam President, we are going to have two or three votes at 5:30. A number of the Senators who have amendments dealing with the supplemental have agreed to come at that time as soon as the votes are over and start debating those amendments tonight. We would like to get as much of that debate out of the way tonight as possible so we can start voting at a reasonably early time tomorrow.

The debate today on FISA has been stimulating, has been very thorough and good. As I understand it, there are three FISA amendments we are going to vote on tonight. That will still leave Senator WYDEN's amendment, and we will worry about taking care of that tomorrow sometime.

I ask unanimous consent that at 5:30 any remaining debate time on the pending amendments—Leahy, Merkley, and Paul—be yielded back and the Senate proceed to vote in relation to the pending amendments in the order provided in the previous agreement; that there be 2 minutes, equally divided, prior to each vote and that all after the first vote be 10-minute votes.

The PRESIDING OFFICER. Is there objection?

Mrs. FEINSTEIN. Reserving the right to object. Might I ask tomorrow when the intelligence votes will take place?

Mr. REID. We don't have the intelligence to do that right now.

Mrs. FEINSTEIN. It is too classified.

Mr. REID. We have two very important measures to finish. I appreciate the collegiality of the Senators on this most important piece of legislation dealing with the espionage on our country part, and we should be able to work it out tomorrow. But we have 21 amendments we have to dispose of dealing with the supplemental. Some of those will be agreed to and would not need votes, but we have a lot of debate time on that in addition to votes. If we just did the votes alone, it would be 8 hours of voting.

We hope to be able to narrow that down, as soon as we have something more definite, so the Senator and Senator WYDEN and others can complete the time, and set up a time that is appropriate for Senator WYDEN's amendment.

The PRESIDING OFFICER. The Senator from Georgia.

Mr. CHAMBLISS. Madam President, I appreciate the comments of the leader. I think the chairman and I—and I assume those who have amendments that will be remaining, I guess one amendment remaining and then final passage. If we could complete debate tonight, we would be prepared, at the pleasure of the leader, to go ahead and finalize the FISA amendments.

Mr. REID. It would be very important to do that. I don't want to press the Senator from Oregon. He has been very good and flew all night from his newborn to get here from Oregon, and he was here at 10 a.m. I don't want to press him anymore.

I say, through the Chair, to my friend from Oregon, how does he feel about finishing the debate tonight?

Mr. WYDEN. I wish to thank the distinguished leader who has been so helpful in ensuring that we have a real debate.

With my colleagues' indulgence, my understanding from the leader is we would have 15 minutes on each side at some point in the morning. If we could proceed with what I thought was the direction we were going, I would very much appreciate it. But it should be limited to 15 minutes on each side, pro and con, at some point in the session tomorrow.

Mr. CHAMBLISS. Madam President, through the Chair, if I could ask the Senator from Oregon, is the Senator talking 15 minutes on his amendment and 15 minutes on passage? Fifteen minutes on each, on your amendment and vote on it and go to final passage?

Mr. WYDEN. It is fine. Through the Chair, 15 minutes with respect to our side reporting the amendment, 15 minutes on the other side, it will be voted on, and then we go to final passage.

Mr. REID. I would suggest this. When we come in, in the morning, why don't

we have this the first order of business. We would have the half hour evenly divided, vote on the Wyden amendment, and then final passage. That way we could devote the rest of the day and tonight to the supplemental.

I ask unanimous consent that be the case in addition to what I just did here.

The PRESIDING OFFICER. Is there objection to the request as modified? Without objection, it is so ordered.

The Republican leader.

Mr. MCCONNELL. Madam President, I am going to proceed in my leader time.

The PRESIDING OFFICER. The Senator has that right.

THE FISCAL CLIFF

Mr. MCCONNELL. Madam President, you will excuse me if I am a little frustrated at the situation in which we find ourselves.

Last night, President Obama called myself and the Speaker—and maybe others—from Hawaii and asked if there was something we could do to avoid the fiscal cliff.

I say I am a little frustrated because we have been asking the President and the Democrats to work with us on a bipartisan agreement for months—literally, for months—on a plan that would simplify the Tax Code, shrink the deficit, protect the taxpayers, and grow the economy, but Democrats consistently rejected those offers.

The President chose instead to spend his time on the campaign trail. This was even after he got reelected, and congressional Democrats have sat on their hands. Republicans have bent over backward. We stepped way out of our comfort zone. We wanted an agreement, but we had no takers. The phone never rang.

So now here we are, 5 days from New Year's Day, and we might finally start talking. Democrats have had an entire year to put forward a balanced, bipartisan proposal. If they had something to fit the bill, I am sure the majority leader would have been able to deliver the votes the President would have needed to pass it in the Senate and we wouldn't be in this mess. But here we are, once again, at the end of the year, staring at a crisis we should have dealt with literally months ago.

Make no mistake. The only reason Democrats have been trying to deflect attention onto me and my colleagues over the past few weeks is that they don't have a plan of their own that could get bipartisan support.

The so-called Senate bill the majority leader keeps referring to passed with only Democratic votes, and despite his repeated calls for the House to pass it, he knows as well as I do that he himself is the reason it can't happen. The paperwork never left the Senate, so there is nothing for the House to vote on.

As I pointed out before we took that vote back on July 25, the Democratic bill is, ''a revenue measure that didn't originate in the House, so it has got no chance whatsoever of becoming law.'' The only reason we ever allowed that vote on that proposal, as I said at that time, was we knew it didn't pass constitutional muster. If Democrats were truly serious, they would proceed to a revenue bill that originated in the House—as the Constitution requires and as I called on them to do again last week.

To repeat, the so-called Senate bill is nothing more than a glorified sense of the Senate resolution. So let's put that convenient talking point aside from here on out.

Last night, I told the President we would be happy to look at whatever he proposes, but the truth is we are coming up against a hard deadline. As I said, this is a conversation we should have had months ago. Republicans are not about to write a blank check for anything Senate Democrats put forward just because we find ourselves at the edge of the cliff. That would not be fair to the American people.

That having been said, we will see what the President has to propose. Members on both sides of the aisle will review it and then we will decide how best to proceed. Hopefully, there is still time for an agreement of some kind that saves the taxpayers from a wholly preventable economic crisis.

I yield the floor.

The PRESIDING OFFICER (Mr. BLUMENTHAL). The majority leader.

Mr. REID. Mr. President, I am not sure my distinguished Republican counterpart has followed what has taken place in the House of Representatives. In the House, as reported by the press and we all know it, one of the plans—it did not have a name, it was not Plan B, I don't know what plan it was because they had a number over there—but this plan was to show the American people that the $250,000 ceiling on raising taxes would not pass in the House. Why did they not have that vote? Because it would have passed. They wanted to kill it. The Speaker wanted to show everybody it would not pass the House, but he could not bring it up for a vote because it would have passed. A myriad of Republicans think it is a fair thing to do and of course every Democrat would vote for that.

The Republican leader finds himself frustrated that the President has called on him to help address the fiscal cliff. He is upset because ''the phone never rang.'' He complains that I have not delivered the votes to pass a resolution of the fiscal cliff, but he is in error. We all know that in July of this year we passed, in the Senate, relief for middle-class Americans. That passed the Senate.

We know Republicans have buried themselves in procedural roadblocks on everything we have tried to do around here. Now they are saying we cannot do the $250,000 because it will be blue-slipped. How do the American people react to that? There was a bill introduced by the ranking member of the Ways and Means Committee in the House, SANDY LEVIN, that called for this legislation. The Speaker was going to bring it up to kill it, but he could not kill it. Then we moved to Plan B, the debacle of all debacles. It is the mother of all debacles. That was brought up in an effort to send us something. He could not even pass it among the Republicans it was so absurd—''he'' meaning the Speaker.

It is very clear now that the Speaker's No. 1 goal is to get elected Speaker on January 3. The House is not even here. He has told them he will give them 2 days to get back here—48 hours; not 2 days, 48 hours.

They do not even have enough of the leadership here to meet to talk about it. They have done it with conference calls. People are spread all over this country because the Speaker basically is waiting for January 3. The President campaigned on raising taxes on people making more than $250,000 a year. The Bush-era tax cuts expire at the end of this year. Obama was elected with a surplus of 3 million votes. He won the election. He campaigned on this issue.

Again, the Speaker cannot take yes for an answer. The President has presented him something that would prevent us from going over the cliff. It was in response to something the Speaker gave to the President himself. But again, I guess, with the dysfunctional Republican caucus in the House, even the Speaker cannot tell what they are going to do because he backed off even his own proposal. The House, we hear this so often, is controlled by the Republicans. We acknowledge that. I would be most happy to move forward on something Senator MCCONNELL said they would not filibuster over here, that he would support and that BOEHNER would support, if it were reasonable. But right now we have not heard anything. I don't know—it is none of my business, I guess, although I am very curious—if the Republican leader over here and the Speaker are even talking.

What is going on here? You cannot legislate with yourself. We have nobody to work with, to compromise. That is what legislation is all about, the ability to compromise. The Republicans in the House have left town. The negotiations between the President and the Speaker have fallen apart, as they have for the last 3½ years. We have tried mightily to get something done.

I will go over the little drill, to remind everyone how unreasonable the Republicans have been. Senator CONRAD and Judd Gregg came up with a proposal to pattern what they wanted to do after the Base Closing Commission. The Commission would be appointed, they would report back to us, no filibusters, no amendments, yes or no, as we did with the base closings. We did a great job there. We closed bases over two different cycles, saving the country hundreds of billions of dollars. We brought that up here—I brought it up. We had plenty of votes to do it, except the Republican cosponsors walked away and wouldn't vote for it. That is where Bowles-Simpson came from.

Again, people talked about why don't we do Bowles-Simpson? One problem: The Republicans appointed there would not vote for it, generally speaking.

Then we went through the months and months of talks between the President and BOEHNER. Both times BOEHNER could not deliver because they refused, because of Grover Norquist, to allow any tax revenues whatsoever. We had meetings with Vice President BIDEN and CANTOR. CANTOR walked out of those meetings. He is the majority leader in the House. We had the Gang of 6, we had the Gang of 8, we had the supercommittee. They were doing good things dealing with entitlements and revenues. One week before they were to report by virtue of statute I get a letter signed by virtually every Republican: Too bad about the supercommittee, we are not going to do anything with revenues.

This is not a capsule of a couple days. This has been going on for years. They cannot cross over the threshold that has been built by Grover Norquist. People who are rich, who make a lot of money, they are not opposing raising the taxes on them. The only people in America who do not think taxes should be raised on the rich are the Republicans who work in this building. Anytime the Speaker and the Republican leader come to the President and say we have a deal for you, the President's door is always open and mine is too.

The PRESIDING OFFICER. The Republican leader.

Mr. MCCONNELL. I would only add the majority leader has given you his view of the last 2 years. I have certainly given you my take on it. The American people have spoken, and they basically voted for the status quo. The President got reelected, the Senate is still in Democratic hands and the House is still in Republican hands and the American people have spoken. They obviously expect us to come together and to produce a result.

As I indicated, the President called me and probably called others last night. My impression is he would like to see if we can move forward. We do not have very many days left. I have indicated I am willing to enter into a discussion and see what the President may have in mind. I know the majority leader would certainly be interested in what the President has in mind. It appears to me the action, if there is any, is now on the Senate side. We will just have to see whether we are able, on a bipartisan basis, to move forward.

The PRESIDING OFFICER. The majority leader.

Mr. REID. Mr. President, we are going to have to decide, my friend says, how we are going to move forward on a bipartisan basis. Even on the Sunday shows we have just completed, with FOX network, Chris Wallace pushed one of the Republican leaders very hard: Would you filibuster something the Democrats brought to the floor? He refused to answer the question. He would not say, and he kept being pressed.

We are in the same situation we have been in for a long time here. We cannot negotiate with ourselves because that is all we are doing. Unless we get a signoff from the Republicans in the House and the Republican leader, we cannot get anything done. For them to talk about a bipartisan arrangement, we have done that. The President has given them one, given them two, given them three, and we cannot get past Grover Norquist. We tried hard, but when there is no revenue as part of the package, it makes it very hard. JOHN BOEHNER could not even pass a tax proposal that he suggested over there where he would keep the taxes the same for everybody except people making over $1 million a year. No. Grover and the boys said, no, can't do that. He didn't even bring it up for a vote.

I am here. I am happy to listen to anything the Speaker and the Republican leader have. They have a way of getting to the President. They don't need my help. I am happy to work with them any way I can, but the way things have been going it is not a good escape hatch we have. They are out of town now for 2 days, 48 hours. That is where we are.

The PRESIDING OFFICER. The Senator from Illinois.

Mr. DURBIN. Mr. President, I think all of us understand the gravity of the challenge we face. This so-called fiscal cliff has been subject to parody and comedy routines, but it is very serious. If Congress fails to act, enacting a measure to be signed by the President, the taxes will go up on every single income-tax-paying American—every one of them; not just the wealthy but everyone. What it means, frankly, is whether one lives in Connecticut, such as the Presiding Officer, or Illinois, such as myself, every family is going to see several things happen automatically. Taxes will go up, the payroll tax cut that has helped this economy is going to disappear, unemployment benefits are going to disappear for millions of Americans who are searching for work, and many other changes will take place, none of which will be favorable in terms of an economic recovery.

I think we ought to stop and reflect for a moment on lessons learned. Here is what I have learned. If we are going to solve this problem, we need to do two things. We need to be prepared on both sides of the table to give. That is a hard thing for many people to acknowledge, but we do; we have to be willing to give on both sides of the table. I remember Senator REID receiving a letter after the supercommittee was hard at work coming up with a bipartisan proposal. It was signed by virtually every Senator on the other side of the aisle and it said: Do not include a penny of revenue.

That was the end of the supercommittee. There was no place to go at that point. They have to be willing to give on revenue, and we have to be willing to give on our side, particularly in the area of entitlements. That is painful. I am one of those who believes, frankly—I have said it over and over—Social Security should be taken from the table and put aside for a separate commission, a separate debate. I do not believe it adds a penny to the deficit, and it should not be a victim of deficit reduction when it has nothing to do with the current deficit.

Second, I understand the importance of Medicaid to those who are young, single moms, the disabled, the elderly, those suffering from mental illness. Medicaid is critically important, and we cannot let that be devastated, particularly in a struggling economy when so many people are out of work or working at jobs without health insurance.

Third, Medicare. In 12 years Medicare will go bankrupt. It will be insolvent. We have to sit down and honestly deal with entitlement reform that saves the programs; doesn't lose them to the PAUL RYAN budget approach but saves the programs in a fiscally responsible way.

That is the first thing we should agree on. Both sides have to come together and be prepared to give.

The second thing is it takes both sides. What Speaker BOEHNER proved to us last week is if they try to do so-called Plan B in the Republican caucus: No hope. But if they take a measure to the floor of the House and invite Democratic and Republican support for it, they can pass it. I believe they can, as we can in the Senate.

That is what needs to be done. We need to have some grassroots efforts in the House and the Senate, of Senators from both sides of the aisle who are prepared to work on a bipartisan basis to solve this problem.

To say we should have done this long ago is to overlook the obvious. Until November 6, we didn't know who the President would be for this new administration, and now we do. It would have been a much different debate with a different outcome if the American voters had not chosen President Obama to be reelected. So we had to wait until November 6, honestly, before we could seriously take on the important and difficult issues involved in this debate, but that time has passed.

The President has stepped forward and has made a proposal. He has made concessions on his proposal and he continues to be here. He flew back from a family vacation that I know is as important to him as it is to all our families over the holidays to be here in Washington and to be part of the conversation and dialog.

I hope Speaker BOEHNER will bring back the House of Representatives. We cannot do this alone. We must do this with their leadership and their cooperation. The point which has been made by Senator REID over and over is that this is an issue and a challenge which we can successfully resolve and we must before we go over the cliff.

Mr. President, the pending business is amendments to the FISA reauthorization bill. I rise to speak about that

legislation, which the Senate will vote on in a little over an hour.

As chairman of the Constitution Subcommittee on the Senate Judiciary Committee, I have some concerns about this law known as the FISA Amendments Act. It does not have adequate checks and balances to protect the constitutional rights of innocent American citizens. Although this legislation is supposed to target foreign intelligence, it gives our government broad authority to spy on Americans in the United States without adequate oversight by the courts or by Congress.

It is worth taking a moment to review the history that led to the enactment of the FISA Amendments Act. After 9/11, President George W. Bush asked Congress to pass the PATRIOT Act. Many of us were concerned that the legislation might go too far, but it was a time of national crisis and we wanted to make sure the President had the authority to fight terrorism. We did not know then that shortly after we passed the PATRIOT Act, the Bush administration began spying on American citizens in the United States without the judicial approval otherwise required by law and without authorization from Congress.

Years later, the Judiciary Committee on which I serve heard dramatic testimony from former Deputy Attorney General Jim Comey about the efforts of Andrew Card and White House counsel Alberto Gonzales to pressure Attorney General John Ashcroft into reauthorizing this surveillance of American citizens while Ashcroft was in the hospital.

After the New York Times revealed the existence of the warrantless surveillance program, the Bush administration demanded that Congress pass legislation authorizing the program. This led to enactment of the FISA Amendments Act in 2008. In short, this legislation was born in original sin.

Congress added some oversight requirements and civil liberties protections to the Bush administration's warrantless surveillance program, but they did not go far enough. That is why I opposed the original FISA Amendments Act, along with the majority of Democratic Senators. I supported an earlier version offered by Senator LEAHY, chairman of our Judiciary Committee, which would have authorized broad surveillance powers but included civil liberties protections.

In 2008, the Bush administration accused opponents of this legislation of not understanding the threat of terrorism. Vice President Cheney went so far as to say: ''The lessons of September 11th have become dimmer and dimmer in some people's minds.''

I am sorry some supporters of this reauthorization legislation have repeated this claim of the Bush administration by suggesting that those of us who want to protect the privacy of innocent Americans believe the threat of terrorism has receded. That is not the case. The American people will never forget the lessons of 9/11, and I personally will not. We need to make sure our government has the authority it needs to detect and monitor terrorist communications, but we also need to ensure that we protect the constitutional rights of American citizens.

Earlier this year, I received a classified briefing on the FISA Amendments Act, and I am as concerned now as I was 4 years ago that the legislation does not include sufficient checks to protect the constitutional rights of innocent Americans.

The FISA Amendments Act is supposed to focus on foreign intelligence, but the reality is that this legislation permits targeting an innocent American in the United States as long as an additional purpose of the surveillance is targeting a person outside the United States. This is known as reversed targeting of American citizens.

The 2008 Judiciary Committee bill, which I supported, would have prevented reverse targeting by prohibiting warrantless surveillance if a significant purpose of the surveillance is targeting a person in the United States. We have a Constitution and a due process procedure spelled out when it comes to surveillance of American citizens. The FISA Amendments Act has found a way around it, and I think that is a fatal flaw.

The FISA Amendments Act permits the government to collect every single phone call and e-mail to and from the United States. This is known as bulk collection. The 2008 Judiciary Committee bill would have prohibited bulk collection of communications between innocent American citizens and their friends and families outside the United States.

The FISA Amendments Act also permits the government to search all the information it collects during this bulk collection. The government can even search for the phone calls or e-mails of innocent American citizens, and these searches can be conducted without a court order. This kind of backdoor warrantless surveillance of U.S. citizens should not be allowed. Both parties ought to stand for our Constitution.

Earlier in this year in the Judiciary Committee's markup of FISA Amendments Act reauthorization, Senator MIKE LEE and I offered a bipartisan amendment to prohibit backdoor warrantless surveillance of Americans. Unfortunately, our amendment did not pass, so Americans will still be at risk for this kind of surveillance if the FISA Amendments Act is reauthorized.

I am pleased the Senate will consider a number of amendments that will at least add some transparency and oversight to the FISA Amendments Act so Congress and the American people will know about how the government is using this authority.

I wish to thank majority leader Senator REID for ensuring that the Senate will have the opportunity to debate and vote on these amendments.

I am cosponsor of the Judiciary Committee chairman PAT LEAHY's amendment which was reported by the committee. This amendment would shorten the reauthorization of the FISA Amendments Act from 5 years to 3 years and strengthen the authority of the inspector general.

I am also cosponsor of an important bipartisan amendment offered by Senator RON WYDEN, who is on the floor. Senator WYDEN, together with Senator MARK UDALL, Senator LEE, and myself, has joined an amendment which would require the director of National Intelligence to provide a report to Congress that includes, among other things, information on whether any intelligence agency has ever attempted to search the communications collected under this legislation to find the phone calls or e-mails of a specific American without a warrant. Isn't this the kind of information Congress and the American people should have?

Senator WYDEN is a senior member of the Intelligence Committee. He is offering this amendment because he has been frustrated in his attempts to obtain basic information about the use of surveillance powers by our government authorized by the FISA Amendments Act.

Earlier this year, Senator WYDEN and Senator MARK UDALL asked the Office of the Director of National Intelligence a fundamental question: How many Americans have been subjected to surveillance under the FISA Amendments Act? The Office of the Director of National Intelligence claimed it is not possible to answer that question. At a minimum, before the Senate acts to extend the FISA Amendments Act, Senators should be given any information the intelligence community has about whether innocent Americans have had their private e-mails and phone conversations swept up by FISA Amendments Act collection.

I am pleased to be a cosponsor of the bipartisan amendment that has been offered by Senators JEFF MERKLEY and MIKE LEE. The Foreign Intelligence Surveillance Act is interpreted by a secret court known as the Foreign Intelligence Surveillance Court. The Merkley-Lee amendment would require that significant legal interpretations of FISA by this secret court be declassified. The concept of secret law is anathema to a democracy. The American people have a right to know how the laws passed by their elected representatives are being interpreted and implemented.

I wish to thank Senators MERKLEY and LEE for taking up this cause. Back in 2003, I worked on a provision in the 9/11 intelligence reform bill that would have required the declassification of significant legal interpretations by the FISA Court. Unfortunately, that provision was removed from the final bill at the insistence of the Bush administration.

Former Senator Russ Feingold, my predecessor as chairman of the Constitution Subcommittee, was also an

outspoken advocate of declassifying FISA Court opinions, and back in 2008 he held a hearing on the problem of secret law. This is an important issue, and I hope the Senate will approve the Merkley amendment.

I am not aware of any substantive objections to the Leahy, Wyden, and Merkley amendments. The only concern I have heard is that if the Senate approves one of these amendments, this bill will have to go back to the House for final approval. There are still 4 days before the end of the year, when the FISA Amendments Act expires, which is plenty of time for the House to vote on the bill the Senate passes.

Even with these amendments, I am concerned this reauthorization of the FISA Amendments Act does not include the checks and balances needed to preserve our basic freedoms and liberties. I believe we can be both safe and free. We can give the government the authority it needs to protect us from terrorism but place reasonable limits on government power to protect our constitutional rights.

I yield the floor.

The PRESIDING OFFICER. The Senator from Georgia.

Mr. CHAMBLISS. Mr. President, I rise in opposition to the legislation we are going to be voting on today. I want to refer to the Leahy amendment just referred to by the Senator from Illinois.

Senator LEAHY's amendment will act as a complete substitute to the bill that is on the floor and, if passed, it will require a conference with the House of Representatives. It is December 27, and the House is not coming back until the December 30. There simply is not time, even if the amendment was substantive enough that it ought to be considered for passage, to get that conferenced with the House and get this bill on the desk of President by December 31, which is when these provisions expire.

The first change the Leahy amendment makes is to reduce the extension sunset from December 31, 2017, back to December 1, 2015. That date coincides with the expiration of certain other FISA provisions; namely, the roving wiretap authority, the business records court orders, and the lone wolf.

It may seem like it ought to make sense that we have all of these expiring at that time but, frankly—having been involved in the intelligence community for the last 12 years—it actually works in reverse from that and it would have a negative influence on the community itself.

If we match the FAA sunset with the PATRIOT Act and IRPTA sunsets, it provides no real benefit to congressional oversight and could actually increase the risk that all these authorities will expire at the same time. If they all expired at the same time, the community would certainly be at a real disadvantage from an operational standpoint.

The Leahy amendment also makes a number of modifications to the executive branch oversight provisions that simply, I believe, are not necessary. For example, the amendment would require the inspector general of the Intelligence Community, ICIG, to conduct a mandatory review of U.S. person privacy rights in the context of the FISA Amendments Act implementation. If we truly believe this sort of review by the ICIG is necessary, we don't need a statutory provision. We can simply get a letter from the Intelligence Committee directing that be done, and it will be done. So trying to think we need a statutory provision on that type of issue—if there is any contemplation that it exists—is simply not necessary.

I am also concerned the Leahy substitute incorrectly elevates the ICIG to the same level as the Attorney General and the Director of National Intelligence by adding the ICIG as a recipient of FISA Amendments Act reviews that are conducted by the DOJ IG and other intelligence community element inspectors general. That doesn't make a lot of sense because the attorney general and the DNI are the only ones responsible for jointly authorizing the collection of foreign intelligence information under the FAA. They are the ones who need to review compliance assessments conducted by the relevant IGs, including those conducted by the ICIG.

If there is concern about whether the ICIG can even conduct these type of reviews, then I think the FAA is clear on that point. Since the ODNI is authorized to acquire or receive foreign intelligence information, the ICIG can conduct these reviews to the same extent as any other inspector general of an element of the intelligence community. He doesn't need redundant statutory authorization.

It is important to understand that the word ''acquire'' as used here doesn't mean acquisition in the actual physical collection of foreign intelligence information. Rather, ''acquiring'' here simply means to come into possession or control of, often by unspecified means. We know this because in the annual review provision in the very next paragraph sought to be amended, the FAA uses the more precise conducting and acquisition terminology which clearly indicates that it affects only those elements that are actually collecting foreign intelligence information.

This same annual review provision would also be modified by section 4 of Senator LEAHY's amendment. His changes would expand the agency heads responsible for conducting these annual reviews to any agency with targeting or minimization procedures as opposed to the current law, which applies to only those agencies that are actually responsible for conducting an acquisition; that is, the physical collection of foreign intelligence information.

Right now, any IC element that receives downstream FISA collection must comply with FISA's retention, dissemination, and use limitations. They don't have any kind of blanket authority to use this information. But the elements required in the annual reviews are geared more toward the actual collectors of the foreign intelligence information than they are toward downstream IC elements that are already required to comply with FISA's retention, dissemination, and use limitations.

The Intelligence Committee has been conducting oversight on this collection program long before it was ever codified in the FISA Amendments Act. We worked closely with the Judiciary Committee to carefully monitor the implementation of the FAA authorities by the executive branch. In the end, I am fully satisfied the FAA is working exactly as intended and in a manner that protects our rights as Americans. As I have just explained, I do not believe Senator LEAHY's proposed changes are necessary, nor do I believe they improve upon the current practice.

I wish to just quickly address what the Senator from Illinois said about the collection on U.S. persons. If one is collecting on someone who is in Pakistan and they call somebody in the United States, he may be a U.S. citizen or he may be a non-U.S. citizen, and if we are collecting on him under a proper court order, there can be at times collection on somebody inside the United States. But the FISA Amendments Act has a provision for dealing with that so that we have what we call minimization provisions in place that immediately do not allow the use of any information collected on a U.S. citizen in an unlawful manner.

The FISA Court is very tough, they are very strict, and they don't just grant an authority to allow our intelligence community to gather information on foreign suspects or foreign entities or somebody who is working for a foreign power in any kind of household manner. They are very strict in their requirements of what must be shown in order to be able to collect. So in the rare times there is a U.S. citizen on the other end of the line, the minimization provisions kick in, and they work. They work very well. The Leahy substitute simply will not allow the community to do the job we need to get done.

Secondly, I wish to address the Merkley amendment. Again, I oppose this amendment. When Congress created the FISA Court back in 1978, it was understood that this court would have to operate behind closed doors given the sensitivity of the national security matters the court considers. Each time FISA has been amended, whether it is section 501 dealing with business records or 702 relating to targeting foreign terrorists overseas, Congress has maintained the same high level of protection for the court's decisions. The Merkley amendment would make those decisions public.

Section 601 of FISA already requires the Attorney General to provide copies

of all decisions, orders, or opinions of the Foreign Intelligence Surveillance Court or Foreign Intelligence Surveillance Court of Review that include significant construction or interpretations of the provisions of the entire act. So there are some reporting requirements right now in place.

The Merkley amendment would further require the Attorney General to declassify and make available to the public any of those decisions that relate to section 501 business record court orders or section 702 overseas targeting provisions.

I believe the American people understand there are certain matters that simply do not need to be made public, particularly when it comes to dealing with bad guys around the world, men who get up every morning and think about ways they can harm and kill Americans. Our folks in the intelligence community are doing a darn good job of gathering information on those types of individuals. Those are not the types of FISA Court orders, given by the court to gather that information that ought to be made public.

In matters concerning the FISA Court, the congressional Intelligence and Judiciary Committees serve as the eyes and ears of the American people. Through this oversight, which includes being given all significant decisions, orders, and opinions of the court, we can ensure that the laws are being applied and implemented as Congress intended.

If a significant FISA Court decision raises concerns, the Intelligence and Judiciary Committees will ask questions—and we have done that from time to time. We hold hearings, we get briefings, we receive notifications and semiannual reports—all designed to give Congress good insight into the real-life applications and interpretations of the FISA Act. This amendment does nothing to advance that oversight, but it could cause real operational problems. If we put in the public domain declassified opinions or unclassified summaries of the most significant court orders, we would give our enemies a roadmap into our collection priorities and capabilities.

I know one of the responses is going to be that the specific intelligence sources and methods could be redacted, but that only solves part of the problem. These guys we are dealing with, these bad guys around the world are smart guys. They are not idiots. When they look at a declassified piece of intelligence information that has redacted portions, they are able to piece the puzzle back together again and figure out exactly who those sources are and what their methods are, which is going to put our intelligence gatherers in jeopardy from a national security standpoint.

There is already substantial oversight of sections 501 and 702 by the FISA Court, the Department of Justice, the intelligence community, and the Congress. I can't think of any two provisions in FISA that have received more attention and more scrutiny than sections 501 and 702. Yet, as a result of this vigorous oversight, we also know these sections are two of the most carefully implemented by all of our investigative authorities.

This amendment sets a dangerous precedent and would undermine some of our most sensitive investigations and investigative techniques. Passing it would also impede our chances of getting a clean FAA extension to the President, as I mentioned earlier in my comments.

Lastly, I wish to quickly mention the Paul amendment. Again, I am going to oppose this amendment because it is inconsistent with the Constitution and it contradicts decades of established Supreme Court precedent and Federal law. Contrary to what this amendment says, there is no fourth amendment violation when the government gets information from a third party about a person who has voluntarily given that information to the third party. The Paul amendment would limit the ability of our intelligence community and our prosecutors to take information that a bad guy has given to a third party, and we get that information from a third party, from that information being used in a prosecution against that bad guy.

In the U.S. v. Miller 1976 Supreme Court case, the Court stated that it ''has repeatedly held that the Fourth Amendment does not prohibit the obtaining of information revealed to a third party and conveyed by him to Government authorities, even if the information is revealed on the assumption that it will be used only for a limited purpose and the confidence placed in the third party will not be betrayed.'' Clearly, that is language directly contrary to the Paul amendment. The Paul amendment says the government would always have to either have consent or a search warrant to get information held by the third party in a system of records.

This amendment would have a significant impact not just on criminal cases, from drugs to violent crime to child offenses, but on national security matters. Often, the information obtained from a system of records as described in this amendment is what we call building-block information. It is the basic information the law enforcement and intelligence communities use to build an investigation long before there may be probable cause. This type of information can be used not just to build cases but to rule out people as suspects—in short, ensuring they won't be subjected to more intrusive and investigative measures such as search warrants. Yet this amendment elevates building-block information in the hands of a third party to the equivalent of privately held information in which there is reasonable expectation of privacy. Even though a person voluntarily hands over information to a third party, this amendment says we should put the genie back in the bottle and now create a reasonable expectation of privacy.

What is more, if the government gets information from a third party without consent or a search warrant, this amendment says it can never be used in a criminal prosecution. The message here to banks, hotels, shipping companies, fertilizer stores, you name it: Don't bother being Good Samaritans and give law enforcement tips about suspicious activities. We will just take our chances and hope we get enough probable cause in time to stop whatever crime or terrorist act may be planned.

Simply stated, this amendment is contrary to case law and contrary to constitutional provisions.

I urge all of my colleagues to vote against the Paul amendment, the Merkley amendment, as well as the Leahy amendment when we begin voting at 5:30.

The PRESIDING OFFICER. The Senator from Oregon.

Mr. MERKLEY. Mr. President, will my colleague from Georgia yield for a question?

Mr. CHAMBLISS. Sure. I would be happy to.

Mr. MERKLEY. I thank the Chair, and I thank my colleague.

My colleague did address issues regarding the Merkley-Lee amendment, which has three stages in it designed to be sensitive to national security. It says that if the Attorney General determines that an opinion is not dangerous to national security, it asks them to release it to the public. It says that if the Attorney General finds that it is sensitive to national security, to release only a summary so written as to protect national security. Then it goes even further to say that if, in the Attorney General's opinion, that is not possible, then please just give us a report on the process the executive branch has already said they are doing, which is to go through a systematic process of determining what they feel should be released independent of any advice we in the Senate might have.

So in these three stages, national security is given full consideration at each step. What it means is that in a situation where we have language such as ''the government can collect information relevant to an investigation,'' and the public wonders, well, is that investigation any investigation in the world, is it—what does ''relevant'' mean? What does ''tangible information'' mean? There are decisions that may confirm that the plain language operates in a fashion that protects the fourth amendment or those interpretations of FISA may, in fact, stand the statute on its head and open a door that was meant to be, by what we did when we passed it here, open just a slit, to be turned into a wide-open gate.

So with those provisions to carefully protect national security, as the Senator so rightly pointed out is necessary, can I perhaps win the Senator's support?

Mr. CHAMBLISS. Well, here is my problem with that provision, and it is twofold. First of all, there is the proverbial elephant's nose under the tent theory, that this is the beginning of opening other things down the road. I think that in this world in which we operate, this cloak-and-dagger world of the intelligence community—and we don't often like to think about the fact that it is necessary in modern times, but it is more necessary today than ever before because of the enemy we face—I think there is a real danger in beginning to open any of those opinions.

The second part of it is kind of tied to that as well. As I said earlier, these folks we are dealing with are very smart individuals. These bad guys carry laptops, they communicate with encrypted messages that we have to try to pick up on with the right kinds of authorizations that the FISA Court gives us and do our best to figure out what they are doing in advance of them taking any action. And while we may not think about a provision in an opinion coming out of the FISA Court being a tipoff to bad guys about what we are doing or, more significantly, what they are doing that is alerting us, you better believe those guys are going to be examining every one of these opinions that we make public, and they are going to be reviewing those opinions, and they are going to, at some point in time, pick up on some small piece of information that is going to give them a shortcut next time they plan an attack against America or Americans.

So I think for us to say that it is the personal opinion of the Attorney General that, well, maybe this does not involve national security, but maybe it does, and we ought to go through those other steps that the Senator alluded to—those bad guys are going to be looking at every single one of those, and at some point in time it is going to come back to haunt us.

Mr. MERKLEY. I thank my colleague for sharing his insights. And certainly national security is extremely important. I obviously reach a different conclusion.

I encourage my colleagues to support the amendment that Senator LEE and I have put forward because it appropriately balances national security concerns against issues of privacy and the fourth amendment. It says simply that where national security is not affected, the public should be able to see these interpretations of what the statutes we write in this Chamber mean so the public can weigh in on whether they feel comfortable with where the secret court has taken us and so we can weigh in, so we can have a debate on this floor not about our best guess about what possible implications might occur from some secret court opinion, but we can actually share a situation where national security is not affected. Well, here is how related to investigations it has been interpreted: Oh my goodness. What was intended to be a door open 1 inch is a door flung open like a barn gate, and the fourth amendment is in serious trouble. That should be debated here.

Certainly, the amendment Senator LEE and I have put forward is very sensitive to the concerns my colleague has presented. I do appreciate his viewpoints. But, Mr. President, through you I ask my colleagues to weigh in on the side that the American people have a right to know what the plain language of the statute actually means after being interpreted by a court.

Thank you.

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. LEE. 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. LEE. Mr. President, no one disputes the vital importance of our national security. Indeed, in Federalist No. 41, James Madison noted that ''[s]ecurity against foreign danger is one of the primitive objects of civil society,'' and he emphasized that such security ''is an avowed and essential object of the American Union.'' Government officials have a solemn duty, particularly in the age of global terrorism, to help ensure that the American people are safe and secure.

Yet at the same time, the government also exists to do a lot more than just promote security. Its most fundamental purpose is to protect our natural and inalienable liberties. Safeguarding individual rights and liberties is the bedrock of American Government. In the words of our Nation's founding document, the Declaration of Independence, it is ''to secure these rights [that] Governments are instituted among Men.''

In our quest for ever-greater security, we must be mindful not to sacrifice the very rights and liberties that make our safety valuable. As Benjamin Franklin put it, ''Those who would give up essential liberty to purchase a little temporary safety, deserve neither liberty nor safety.''

I worry that in seeking to achieve temporary safety, some of the authorities we have given the government under FISA may compromise essential rights and liberties. In particular, I am concerned about the government's ability, without a warrant, to search through FISA materials for communications involving individual American citizens. I worry that this authority is inconsistent with and diminishes the essential constitutional right each of us has ''to be secure . . . against unreasonable searches and seizures.''

We do not know the precise number of communications involving American citizens that the government collects, stores, and analyzes under section 702 of FISA. Whether this number is large or small, I believe we must enforce meaningful protections for circumstances when the government searches through its database of captured communications looking for information on individual American citizens; otherwise, by means of these so-called backdoor searches, the government may conduct significant warrantless surveillance of American persons. I believe this current practice is inconsistent with core fourth amendment privacy protections and needs to be reformed.

During consideration of FISA in the Judiciary Committee, Senator DURBIN and I offered a bipartisan amendment to address this very problem. The language of our amendment is identical to that offered by Senators WYDEN and UDALL during consideration of FISA by the Select Committee on Intelligence. The amendment clarifies that section 702 does not permit the government to search its database of FISA materials to identify communications of a particular U.S. person.

In effect, it would require the government to obtain a warrant before performing such queries involving an American person's communications. The amendment is limited in scope. It excludes from the warrant requirement instances where the government has obtained an emergency authorization, circumstances when the life or physical safety of the American person targeted by the search is in danger and the search is for the purpose of assisting that same person, and in instances where the person has consented to the search.

Moreover, the warrant requirement would apply only to deliberate searches for American communications and would not prevent the government from reviewing, analyzing, or disseminating any American communications collected under FISA and discovered through other types of analysis.

FISA rightly requires that the government obtain a warrant anytime it seeks to conduct direct surveillance on a U.S. person. Indirect surveillance of U.S. persons by means of backdoor searches should be no different. No one disputes that the government may have a legitimate need to search its FISA database for information about a U.S. person, but there is no legitimate reason why the government ought not first obtain a warrant, while articulating and justifying the need for its intrusion on the privacy of U.S. persons. Our constitutional values demand nothing less.

Unfortunately, we will not be voting on such an amendment later today, so our reauthorization of FISA will include a grant of authority for the government to perform backdoor searches, seeking information on individual American citizens without a warrant. I believe such searches are inconsistent with fundamental fourth amendment principles. For this reason, I cannot support the FISA reauthorization, and I urge my colleagues to oppose the bill in its current form.

I would like next to speak about a few amendments I think would make some improvements to this legislation, nonetheless. I would like to first speak on the Merkley-Lee amendment, which would require declassification of significant FISA Court opinions.

The FISA Court is authorized to oversee requests for surveillance both inside and outside of the United States. Given the sensitive nature of these requests, it is necessarily a secret court, a court whose rulings, orders, and other deliberations are and remain classified. Yet, although much of the court's work must properly be kept confidential, it must not operate without meaningful oversight.

Beyond the straightforward application of the law to specific and sometimes highly classified circumstances, FISA Court rulings may include substantive interpretations of governing legal authorities. As is true in every court called on to construe statutory text, FISA Court interpretations and applications are influential in determining the contours of the government's surveillance authorities. Unlike specific sources of information or particular methods of surveillance collection, which are properly classified in many instances, I believe the FISA Court's substantive legal interpretation of statutory authorities should be made public.

A hallmark of the rule of law which is a bedrock principle upon which our Nation is founded is that the requirements of law must be made publicly available—available for review, available for the scrutiny of the average American.

The Merkley-Lee amendment establishes a cautious and reasonable process for declassification consistent with the rule of law. Its procedures are limited in three key respects:

First, the pathway for declassification applies only to the most important decisions that include significant instruction or interpretation of the law.

Second, declassification must proceed in a manner consistent with the protection of national security, intelligence sources and methods, and other properly classified and sensitive information.

Third, the process contemplates instances where the Attorney General determines declassification is not possible in a manner that protects national security. In such cases, the process requires only an unclassified summary opinion or a report on the opinion that happened to remain classified.

This modest and bipartisan amendment will help ensure that we are governed by the rule of law, that government activities are made by applying legal standards known to the public, and that we remain, in John Adams' famous formulation, ''a government of laws and not of men.''

I would like next to speak on the Wyden amendment to require a report on the privacy impact of FISA surveillance. The FISA Amendments Act of 2008 gave the government broad authority to surveil phone calls and e-mails of people reasonably believed to be foreigners outside the United States. Despite the intent that this authority be directed at noncitizens who are located abroad at the moment the surveillance is collected, officials have acknowledged that communications by Americans may be swept up in the government collection of those same materials.

I believe it is critical for both Congress and the public to have access to information about the impact of these FISA authorities on the privacy of individual Americans. Only with such knowledge can we reasonably assess whether existing privacy protections are sufficient or whether reforms might be needed. Yet senior intelligence officials have declined to provide in a public forum the necessary information to such discussion and such analysis.

In particular, it is essential that we learn the extent to which Americans' communications are collected under FISA, whether this includes any wholly domestic communications, and whether government officials subsequently searched through those communications and conducted warrantless searches of phone calls and e-mails related to specific American persons. This modest compromise in this modest, commonsense amendment requires the Director of National Intelligence to provide this information and report back to Congress regarding the privacy impact of the FISA Amendments Act. Given the sensitive nature of this information, our amendment provides for necessary redactions to protect core national security interests that would be important to our country and help keep us safe.

Providing Congress with answers to these critical questions should be a relatively uncontroversial exercise. It should be a no-brainer. Only with such information can we do our job of ensuring a proper balance between intelligence efforts on the one hand and the protection of fundamental individual rights and liberties on the other hand.

Finally, I would like to speak on the Paul amendment, the Fourth Amendment Preservation and Protection Act. The fourth amendment protects the right of the people to be secure in their persons, papers, and effects against unreasonable searches and seizures. At its core the Constitution protects our right to be free from unwarranted government intrusion in our affairs absent probable cause, which the government must set forth with specificity to a court in an application for a warrant.

It is undisputed that absent exigent circumstances, consent, or a warrant, the government may not intrude upon a person's home and search through his papers and personal effects. But we no longer keep our most sensitive information solely in the form of physical papers, physical documents, and other tangible things. The explosion of data sharing and data storage has made our economy more responsive and more efficient, but it also creates the potential for government abuse.

Congress has a fundamental responsibility to protect the individual liberties of Americans by ensuring that the Constitution's core fourth amendment protections are not eroded by the operation of changed circumstances, by new techniques that are made possible and in some cases made necessary by new technology. But Congress has failed to do this.

Some court rulings have likewise fallen short of protecting the full scope, the full spirit of the fourth amendment as it applies to our world of complex data sharing. Courts have attempted in good faith to determine whether individuals have a reasonable expectation of privacy in different kinds of information that they might share with third parties, sometimes online, but the results of many of these rulings are a varied and unpredictable legal landscape in which many do not know and cannot figure out whether they can rely on the fourth amendment to protect sensitive information they routinely share with others for a limited business purpose.

Congress needs to act to preserve the fourth amendment's protections as they apply to everyday uses, including routine use of the Internet, use of credit cards, libraries, and banks. Absent such protections, individuals may in time grow wary of sharing information with third parties.

I am cognizant that this area of the law is complex. It is full of changes. It is full of instances in which we have to undertake a very delicate balancing act. Nevertheless, much work remains to be done to ensure that the fourth amendment protections are here and that they are real and that they benefit Americans and they do so in a way that does not interfere with legitimate law enforcement and national security activities. We must not shy away from the task simply because it is hard. It is daunting, but it is possible and it is necessary. Congress must act to preserve Americans' constitutional right to be secure in their persons, their papers, and effects against unreasonable searches and seizures.

The PRESIDING OFFICER (Mr. FRANKEN.) The Senator from Montana.

Mr. TESTER. I would like to talk about the FISA Amendments Act. I thank Senator WYDEN for his leadership on this issue and for offering an amendment to this act that I have cosponsored and will speak on in just a minute.

On our vote tomorrow, I will say that I will reluctantly plan to oppose the vote on the FISA Amendments Act when we get to final passage. There are many reasons for that. I am not naive. I do understand there are people out there who want to do harm to our Nation. I very much appreciate the folks in the intelligence community who do

difficult behind-the-scenes work to keep us all safe. But at the same time, I believe our civil liberties and our right to privacy need to be protected. I do not believe they are sufficiently protected under the current law. So simply extending current law for 5 more years is irresponsible, and it is not a reflection of our values.

There are a few ways this bill falls short. I am especially concerned about the practice of reverse-targeting. The deputy majority leader talked about it about an hour ago.

The intelligence community does not need a warrant to conduct surveillance on someone located overseas. I think we can all agree there is no problem there. The problem comes when the intelligence community conducts surveillance on someone overseas where the real purpose is to gain information about someone right here in America. That can happen without a warrant, and we should not let that happen without a warrant.

Our national security is not threatened if we require this information to be tagged and sequestered and subject to judicial review. It would merely ensure that the information intercepted overseas in the form of communications to or from an American citizen would have to be overseen by the courts. Current law is supposed to prohibit this practice, but there really is no way to enforce the prohibition. That leaves the door open for abuse. That is simply unacceptable.

Unfortunately, neither Senator WYDEN nor I are able to offer our amendments that would address this hole in our privacy rights.

We can do better. We can also do better when it comes to transparency. The simplest amendment the Senate can approve today is the one I am proud to consponor. It is the Wyden amendment to require the Director of National Intelligence to report to Congress on the impact of FISA amendments on the privacy of American citizens. It is a commonsense amendment.

The report could be classified but would no longer allow the intelligence community to ignore requests for information from Congress. Why in the world do we not require the intelligence community to be accountable to us for its actions? It is our responsibility in Congress to hold the entire executive branch accountable. If we do not ask these questions, we are simply not doing our job. That is true whether it is President Obama, President Bush, or some other President.

I hope we can adopt the Wyden amendment to improve the reporting requirements of FISA. I urge my colleagues to support this commonsense amendment.

I yield the floor.

The PRESIDING OFFICER. The Senator from Indiana.

Mr. COATS. Mr. President, I ask unanimous consent the Senate proceed to the immediate consideration of H.R. 1, for the purpose of calling up and debating the Coats amendment; that following the remarks of Senator COATS Senator ALEXANDER be recognized; the Senate resume consideration of the FISA bill, H.R. 5949; and that all provisions of the previous orders remain in effect.

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

DEPARTMENT OF DEFENSE APPROPRIATIONS ACT—Resumed

The PRESIDING OFFICER. The Senate will proceed to the consideration of H.R. 1, which the clerk will now report by title.

The legislative clerk read as follows:

A bill (H.R. 1) making appropriations for the Department of Defense and the other departments and agencies of the Government for the fiscal year ending September 30, 2011, and for other purposes.

Pending:

Reid amendment No. 3395, in the nature of a substitute.

AMENDMENT NO. 3391 TO AMENDMENT NO. 3395

(Purpose: In the nature of a substitute.)

Mr. COATS. Mr. President, I call up amendment No. 3391.

The PRESIDING OFFICER. The clerk will report.

The legislative clerk read as follows:

The Senator from Indiana [Mr. COATS] proposes an amendment numbered 3391.

(The amendment is printed in the RECORD of December 17, 2012, under ''Text of Amendments.'')

The PRESIDING OFFICER. The Senator from Indiana.

Mr. COATS. Mr. President, I am cognizant of the fact that we will have a series of votes beginning in just 15 minutes, and so even though the unanimous consent request on this amendment is for 30 minutes equally divided, I am going to try to judiciously use this time between myself and Senator ALEXANDER to explain why we are offering this amendment, and hopefully our colleagues will be persuaded to support us when we vote on this probably tomorrow.

We are all, of course, sensitive to the pain and damage inflicted by Mother Nature in the Northeast. In fact, some of the Northeast is getting some more of that pain with a storm up there today.

No State or region in our country should be left to fend for itself after a storm as devastating as Hurricane Sandy. It is important to understand that many things have overwhelmed the ability of the States and local communities to deal with some of the effects of this, and that is why the Sandy emergency supplemental is before us attached to H.R. 1 and why we will be voting on that, I assume, tomorrow.

There are two versions before us; one is the Senate Democrats' emergency supplemental proposal. That totals $60.4 billion. It includes nearly $13 billion in mitigation funding. That goes for the next storm, not this storm. There is $3.46 billion for Army Corps of Engineers, $500 million of which is projects from previous disasters; $3 billion to repair or replace Federal assets that do not fall into the category of emergency need. There is $56 million for tsunami cleanup on the west coast, which, of course, does not relate to Sandy. There is a lot of new authorizing language for reform of disaster relief programs, which I would support through the regular process. But without having gone through the authorizing committee, I don't think that is a good idea.

Our proposed alternative provides $23.8 billion in funding for the next 3 months. We are not saying this is the be-all and end-all of what Congress will ultimately fund to meet the needs of those who have been impacted by Sandy. We are simply saying that before rushing to a number, which has not been fully scrubbed, fully looked at, plans haven't been fully developed yet—and that is understandable—we think it most important we provide emergency funding for those in immediate need over the next 3 months.

We have carefully worked with FEMA Director Fugate and we have worked with Secretary Donovan at HUD. We have worked through the Appropriations Committee to identify those specific needs that get to the emergency situations under which this bill is titled. It provides funding for States to allow them to begin to rebuild but also leaves us time to review what additional funds might be needed.

So rather than throwing out a big number and simply saying let us see what comes in under that number, let us look at the most immediate needs that have to be funded now and provide a sufficient amount of funds in order to do that. In fact, the amount we are providing would extend, in terms of outlays, far beyond March 27, but we want those mayors and we want those Governors to be able to begin the planning process of looking how they would go forward. We also want, in respect to our careful need, to carefully look at how we extend taxpayer dollars.

We want to allow this 3-month period of time for which the relevant committees in the Senate and the House of Representatives can look at these plans, can document the request, can examine the priorities that might be needed and then put a sensible plan in place that hopefully will be an efficient and effective use of taxpayer dollars. Therefore, we have struck from the Democratic proposal all moneys that would go to mitigation funding, not saying mitigation funding isn't necessary but simply saying it doesn't meet the emergency need this first 3-month proposal addresses. This will give States time to begin to rebuild but also allow us time to review what additional funds are needed for that rebuilding.

We don't allow authorizing language because we don't believe in authorizing something on an emergency appropriations bill that ought to go through the