

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

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

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

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

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

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

I yield the floor.

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

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

The PRESIDING OFFICER. Is there an objection?

Without objection, it is so ordered.

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

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

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

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

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

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

Last summer, our intelligence community officials informed us that, as a result of a decision by the FISA Court and changes in technology, they had lost the ability to collect intelligence on terrorists around the world who wish to harm the United States. Congress responded to these pleas from our intelligence community and passed the Protect America Act, which tempo-

rarily fixed this problem, but we knew then we had to have a more permanent solution. Despite this knowledge and despite the hard work of the Senate Intelligence Committee for the previous 10 months, Congress failed to fix FISA in February. The House leadership refused to consider the Senate-passed bill, despite stated support from a majority of that body's members. I can only surmise that there were political, rather than substantive, reasons that prevented this legislation from passing months ago. Some may say this is the nature of one of the political branches of Government. What no one talks about is the harm this has caused.

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

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

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

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

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

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

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

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

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

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

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

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

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

Under no circumstance is it acceptable for intelligence gathered under an exigent circumstance, and later found to be acceptable by the court, to be discharged. Intelligence does not wait for court orders, and it must be collected timely. The intelligence community should not have to wait for a court order to continue collection against those who seek to harm America. If the court later determines that the tar-

geting and certifications were lawful, then our intelligence officials should be allowed to review that which was collected.

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

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

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

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

Mr. President, I yield the floor.

The PRESIDING OFFICER. The Senator from Vermont.

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

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

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

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

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

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

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

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

This legislation does not strike the right and appropriate balance between ensuring that our intelligence community has the tools it needs to protect our country against international ter-

rorism and protecting the civil liberties of law-abiding Americans. Instead, it gives a get-out-of-jail-free card to companies that may well have violated the privacy and constitutional rights of millions of innocent Americans.

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

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

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

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

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

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

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

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

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

We have seen data mining of personal records.

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

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

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

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

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

We have seen destruction of CIA tapes.

The list goes on and on.

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

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

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

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

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

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

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

Madam President, I yield the floor.

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

Mr. HATCH. Madam President, Congress has been working on FISA mod-

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

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

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

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

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

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

So why has it taken us so long to get here, and what is the concern that has caused the delay; that the President

listened to the international communications of al-Qaida after 9/11? No President would ever engage in this type of activity, except of course President Woodrow Wilson, who authorized interceptions of communications between Europe and the United States, and President Franklin Roosevelt, who in 1940 authorized interception of all communications into and out of the United States.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

We are now hearing about efforts to strike or amend the immunity provi-

sions in the compromise bill so that Members may express their views.

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

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

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

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

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

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

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

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

We have heard other allegations that this bill does not provide adequate pro-

tections for innocent Americans. Make no mistake. The role of the Federal judiciary into the realm of foreign intelligence gathering is greatly expanded by this legislation.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

This is surely an intimidating environment for our intelligence analysts. Essentially, any accident or mistake will be highlighted to Congress. Unforgiving is not the word. I wonder how many private citizens would enjoy hav-

ing policies at their jobs where any inadvertent error would result in notification and review by Congress?

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

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

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

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

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

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

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

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

Now I agree there are some instances in which we may want to target indi-

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

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

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

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

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

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

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

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

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

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

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

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

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

I urge my colleagues to support this monumental and historic legislation.

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

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

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

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

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

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

I yield the floor.

The PRESIDING OFFICER. The Senator from Oregon.

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

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

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

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

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