

Mr. SCHUMER. Madam President, I will be brief. I know Senator *Grassley* has been waiting as well. I will not speak for very long.

I rise to speak about S. 2035, the Free Flow of Information Act, a bill that Senator *Specter* and I have spent a lot of time on, worked on, and is cosponsored by many in the House and notably Senators **DODD** and **LUGAR** who had a previous bill, as well as, of course, Senator *Leahy* who led the charge on so many different issues and has been very helpful in us moving this legislation forward.

I am going to speak tomorrow when we address the bill, but I wanted to let my colleagues know of a substitute amendment that Senator *Specter*, I, and others will offer because it will modify the bill and meet some of the objections.

First let me say the bill is very much needed. We have to find the right balance between the free flow of information and the ability of reporters to get that information from those in Government and, at the same time, not be so far in that direction that we allow people to either break the law or harm the security of the United States.

This has been much more difficult than it appears to achieve, but we are very close. The bill codifies and standardizes existing tests used by Federal courts so that journalists, say, in Illinois are not subject to different treatment than journalists in California.

It certainly allows whistleblowers to be protected when they tell somebody about something untoward. We certainly don't want, if a test is being fixed in the FDA because a drug company wants it, to prevent some public servant in the Government from letting a reporter know to prevent harm. But at the same time, there is no absolute privilege and there are exceptions in terms of harming national security, acts of terrorism, and other matters, such as kidnaping or murder.

Again, I will talk about this bill at some length tomorrow. But I do want to go over some of the changes we have made so my colleagues are aware of them before we vote.

As I said, Senator *Specter* and I have put together a substitute which if we adopt the motion to proceed--and I hope we will--we will immediately offer, and that will be the base bill we will discuss. Let me talk about the changes made.

First, the intelligence community had concern that it would be too difficult to prosecute leaks of classified information. The new bill moves consideration of leaks of classified information from section 2 of the bill to section 5, and that removes two major hurdles for Federal prosecutors.

Under the new law, prosecutors will not have to prove any longer that they have exhausted all options for finding the information or that the information is essential to their investigation. These hurdles still remain in the Department of Justice internal guidelines, but the bill is not as strict in that regard.

The bill also no longer requires that the person who leaked the information was authorized to have it.

This substitute clarifies that the act will have zero impact on intelligence gathering under the Foreign Intelligence Surveillance Act. This bill does not affect FISA.

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Third, the substitute explicitly provides that sensitive Government information will not be disclosed in open court. There was worry that under a whistleblower law, that might happen. We make it clear that security has to come first, but there also has to be balance in the test.

Four, the definition of a covered person--and this has been one of two areas of some controversy--has been narrowed to ensure that it protects only legitimate journalists, first used in the Second Circuit case of *von Bulow v. von Bulow* to determine who qualifies as a covered person. Someone who blogs occasionally is not going to get the protection here. Of course, someone on a blog who is a regular journalist but happens to use the blog as a medium will be protected. And that is how it ought to be.

Five, the substitute creates an expedited appeals process ensuring that litigation regarding whether the protection applies will be resolved as quickly as possible. In section 8, we expedite the appeals process.

These are the changes made. They make the bill better. The bill has the support of the journalistic community. It has the support of 41 sitting States attorneys general, both Democrats and Republicans. It is

one of those rare bipartisan moments. It has the support of Senator *Obama* and Senator *McCain* and, of course, passed out of the Judiciary Committee 15 to 4. A similar bill passed out of the House by 398 to 21 and, obviously, it has been endorsed by 100 newspapers. That is easy to say, but in this town both the *Washington Post*, a more liberal paper, and the *Washington Times*, a more conservative paper, have endorsed it.

This bill has taken lots of time and lots of work to achieve a careful balance. This is a rare moment, praise God, a broad consensus, and I hope we can move this bill forward tomorrow.

Madam President, I will speak at greater length tomorrow when we are on the bill, but I wanted to let my colleagues know the substitute changes which we will publish in the *Record* this evening so people will have a chance to look at it.

I yield the floor so that my colleague from Iowa can speak.

The PRESIDING OFFICER. The Senator from Iowa.

TAX POLICY

Mr. GRASSLEY. Madam President, 2 days ago, I came to the floor to talk about tax policy and the history of tax policy. I have come to follow up on that speech of 2 days ago to talk about the recent history of speeches that were made in past Presidential elections and the tax policy that was associated with those speeches and in another day or two, come to the floor to speak about the different tax policies between Senator *Obama* on the one hand and Senator *McCain* on the other hand.

History is very important. Elections have consequences. Policy coming out of an election has consequences and eventually affects real people. The impact upon the voter of past elections, what people said in those elections, what happened after the election in policy, ought to be things people are taking into consideration for the upcoming Presidential election. As to that speech I gave 2 days ago, I want to go back and remind my colleagues of a couple of comments I made at that particular time.

At various times during the past 25 years, we have had times when Democrats have controlled both the Presidency and the Congress. There have been times when the Democrats have controlled Congress and we had a Republican President. And there have been times when we have had both a Republican President and a Republican Congress. Tax cuts or tax increases have resulted from that.

And you find a pretty good pattern of when you have both a Democratic Congress and a Democratic President that you have big tax increases, as is the case in 1993--if you remember the big tax increase of 1993.

Then there are periods of time when we have had a Republican President and a Republican Congress and you can see tax decreases--very deep decreases in taxes. Then you have a period of time in here where there was a little flurry--some tax cuts, some tax increases--when we had a Republican President and a Democratic Congress.

So elections do have consequences. Another chart that would show it a little better and more specifically would be this thermometer chart, where we have it very clear that when you have times when you have a Democratic President and a Democratic Congress, you have some of the biggest tax increases in history. And that would be this figure. There are times we have had a Republican President and a Democratic Congress with some tax increases but a little bit less. There are times we have had a Democratic President and a Republican Congress with slight tax decreases.

When you have a Republican President, a Republican Senate, and a Democratic House, you have some tax decreases but not very much. Then you have times when you have a Republican President, a Democratic Senate, and a Republican House, and you have tax decreases but not by very much. Then you have times when you have a Republican President and a Republican Congress and you have deep tax cuts.

So what this chart shows--this thermometer--over the last 25 years, is that if you have Republican Presidents and Republican Congresses you have deep tax cuts. When you have Democrats controlling both the Presidency and the Congress, you have very rapid tax increases. So elections do have consequences.

I want to go now to a period of time of a specific election and the tax consequences that came as a result of that election. But I think you have to realize that the relationship is clear from the past 25 years: the more relative power Democrats have, the higher the probability of a tax increase. So Americans will need to think long and hard about campaign promises of tax relief as they consider their choices in this Presidential election.