

first of all, we have a farm bill in which both the House and the Senate addressed some of these longstanding problems in the food stamp structure. I don't know when that farm bill is going to get passed. The President has threatened to veto it. We will get it done sometime. Sooner or later we will get this farm bill done—hopefully, in the next month or so. But then the changes that have to take place to change the system so we can begin to increase the asset level, take the cap off of the childcare deduction, and then take a standard deduction and factor in inflation for that, that takes time. We will not get it done right away. I think it would be the height of cruelty to say to people who need this food and who need food stamps that we are going to increase it for 6 months and then we are going to take it away. Now, at least if you get a rebate—as I said, I am not in favor of all of these checks going out, but if you are going to get a check, you can save it for a rainy day or you can do something like that. But with food stamps, you can't do that. So if you get food stamps, and we say, OK, we will increase your food stamps, you can buy a little better protein, you can eat a little bit better for 6 months, and then we are going to cut it off.

Keep in mind that right now, under our Food Stamp Program, the amount of money a person gets per meal on food stamps is \$1—\$1—\$1. Have you ever tried eating a meal for a dollar? Try it sometime.

So what we are talking about is not lavish living. We are talking about giving people just the basic necessities. So, again, this is our chance to do something that is morally right and at the same time target our help in stimulating the economy.

Second only to that would be increasing unemployment benefits. People who have been unemployed for a long time need to have it extended, to have their unemployment benefits extended. That also has a big multiplier effect. Also, close on the heels of that in terms of benefiting the economy is the money that we use to build our infrastructure; that is, the roads and the bridges, the school buildings, the sewer and water systems, government buildings. It would be things like community development block grants that we put out to our cities and communities to do construction projects.

So it seems to me, again, if we are going to put money out there, this is what we ought to be doing. We have billions of dollars of construction that is needed to be done in this country on school buildings, classrooms, bridges—need I mention Minnesota—highways. Our highway system is falling apart, that great interstate highway system that we built, and I worked on when I was in high school, well over a half a century old. Keep in mind when it was built, we didn't have the truck traffic then that we have today. So we need to put money into the infrastructure. Those jobs are ready to go by May. By

the time these checks would get out they are talking about, you would have people starting to go to work.

The benefits of putting money into an infrastructure project are multiple. There are multiple benefits. First of all, the work is done locally. You can't outsource it to India or China. Obviously, if you are going to build a schoolhouse, you have to hire people locally to do it. So the work is done locally.

Secondly, almost all of the materials used in any kind of infrastructure project, whether it is cement or reinforcing rods or whether it is carpeting or doors or windows or lights, heating and air-conditioning systems, drywall—you name it—almost all of that is made in America. Maybe not all of it, but the vast majority of it is made in this country. So the ripple effect throughout our economy is great when you do an infrastructure project. You put people to work. Most of the materials and stuff you buy are American made.

Third, once you do this, you have something of lasting good to our economy, something that helps the free enterprise system function better.

When our roads and highways are plugged up with traffic and it can't move, that hurts business. When we don't have adequate clean water and sewer systems for communities, businesses can't locate and, therefore, operate efficiently. When we don't have the best schools in America with the best facilities, the high-speed hookups to the Internet, when we don't have schools which are the jewel of a neighborhood—the best thing that kids would ever see in their activities during the week would be the school—not the mall, not the theater, not the sports arena but their school. What if that was the nicest thing in every neighborhood? I tend to think that would help our teachers to teach better, our recruitment of teachers, and give kids more incentive to study. But it provides a lasting benefit for this country. So mark me down as one who is—I am just more than a little cautious and maybe a little bit more conservative on this idea of sending everybody a check. I think people would be better off and our economy would be better off if we did those three things: Do something on the food side for the people who are hardest hit in our economy, extend unemployment benefits, and put a slug of money into infrastructure.

That is what we ought to tell President Bush. That is what we ought to tell the White House. That is our program. That is the Democrats' program for this country: to put people back to work, not just to send everybody a check, but let's give everybody a job. Let's give them jobs out there that will build our country. The multiplier effect on that is enormous. But if you are just going to send somebody a check, that is it. They might just tend to buy something made in China or Japan or

who knows where else. That is just not the best thing for our long-term economy and not for what we want to do in this country.

So, once again, it seems as though we look for short-term solutions to long-term problems. Our long-term problems are the infrastructure of this country and the fact that we don't have a good job base for people in this country—long-term problems. We are importing more and more and more from overseas. I listened to the President last night in his State of the Union message when he talked about how exports are up. He didn't mention how much more imports were up over exports. He just didn't even mention that. We are in hock to China up to our eyeballs, and it is getting worse not better. So we are going to send everybody \$500 and tell them to go spend some money on things probably made in China.

So, again, I don't think we ought to roll over. I don't think we ought to block anything. But I think we ought to come up with a package that does something for our economy. The things I just outlined I think will do more for our economy than sending everybody a \$300, \$500, or maybe a \$1,200 check.

Lastly, I see there is some talk about sending everybody a check—no income limit. Well, I thought the income limits in the House were too high: \$75,000, \$150,000 for a couple, so you could get up to 1,200 bucks. I just don't think that is logical, and I don't think it is healthy. I don't think it is good for our country. I don't think it is good for the long-term health of our economy.

So I hope we can work together in a bipartisan atmosphere to come up with a package that is not just throwing money at the problem but targets it, and targets it to those areas that will be effective in putting people back to work, helping people at the bottom of the ladder, and providing for the long-term economic underpinning of our country.

Mr. President, I yield the floor.

The PRESIDING OFFICER. The Senator from Maine is recognized.

FISA

Ms. SNOWE. Mr. President, I rise today as a member of the Select Committee on Intelligence to discuss the pending legislation to modernize the Foreign Intelligence Surveillance Act that was originally passed in 1978. At the outset of my remarks I would like to first express my sincerest appreciation to the chairman of the committee, Senator ROCKEFELLER, and the vice chair, Senator BOND, for their exceptional leadership in working in a concerted, cooperative manner to shepherd the Intelligence Committee bill through the legislative process in a strong, bipartisan manner.

As my colleagues know, the act is set to expire on February 1—less than a week from now. It is imperative that Congress pass legislation reflecting the

will of this body and send it to the President's desk for enactment. At a time when al-Qaida lurks in the shadows, making no distinctions between combatants and noncombatants, between our battlefields and our backyards, we as lawmakers must work with firm resolve to ensure that the intelligence community possesses the tools and the legal authority that is required to prevent future terrorist attacks on our soil. Yet in the wake of years of controversy surrounding the Terrorist Surveillance Program, we all must be mindful of our duties to uphold the constitutional protections as old as this Republic. I do not believe these goals are mutually exclusive.

The Foreign Intelligence Surveillance Act, commonly known as FISA, establishes a distinct system of laws and regulations for the Government's ability to legally conduct national security-related surveillance of communications. The Intelligence Committee proposal, which was reported out on a strong 13-to-2 bipartisan vote, does not present the ideal solution to the urgent matter before us, underscoring the difficulties and complexities that are presented by the question of intelligence surveillance. However, it is a marked improvement over the Protect America Act and represents the collective agreement of 13 of the 15 members of the Intelligence Committee, both Republicans and Democrats. I appreciate the disparate views that many of my colleagues on both sides of this aisle espouse, but in the end, the Senate must work to achieve its will and to find the common ground that is so essential on this issue for our Nation's security. For Congress to be relevant, it must ultimately come to a legislative resolution and conclusion.

The underlying premise of FISA recognizes that obtaining a standard search warrant through a typical Federal or State court is not appropriate when dealing with sensitive security operations and highly classified information. In creating separate legal mechanisms for such matters, FISA has, for nearly 30 years, relied upon the rulings of the special Foreign Intelligence Surveillance Court and continuous congressional oversight in ensuring that fourth amendment protections against unreasonable searches and seizures are respected. Although FISA is and remains an indispensable tool in the war on terror, it was written almost 30 years ago—long before the name “al-Qaida” rang with any significance—and it has begun to show its age.

FISA was enacted before cell phones, before e-mail, and before the Internet, all of which are used today by hundreds of millions of people across the globe. Unfortunately, those numbers include terrorists who are using these tools for planning, training, and coordination of their operations. Put simply, FISA's technology-centered provisions do not correspond to the systems and apparatus that are used in communications

today. As Admiral McConnell, Director of National Intelligence, said most bluntly and straightforwardly:

FISA's definition of electronic surveillance [has] simply not [kept] pace with technology.

But we all know this is not the only backdrop to FISA reauthorization. Prior to December 2005, only the party leaders in both the House and the Senate, and the chairmen and ranking members of those Houses' respective Intelligence Committees—the so-called gang of eight—had any knowledge that warrantless surveillance was occurring on U.S. soil with neither court approval nor congressional authorization. Once the program came to light, the administration asserted it had the legal authority to conduct such surveillance anyway, citing considerably tenuous interpretations of both article II of the Constitution and the 2002 authorization for the use of military force in Iraq.

This was not the power-sharing construct between the three branches of Government under which FISA had operated for nearly three decades. Rather, this was a unilateral exercise of executive branch authority to the exclusion of the other two. The use of unchecked executive power was neither how the Framers of the Constitution nor the framers of FISA intended this matter to be addressed.

Accordingly, less than 2 months later, I, along with Senators DeWine, HAGEL, and GRAHAM, introduced the Terrorist Surveillance Act of 2006, which called for strict legislative oversight and judicial review of the program. A number of colleagues joined the effort with a variety of additional proposals to both exert congressional oversight, as well as to modernize FISA; and the administration, bowing to this collective congressional pressure, finally permitted full access to the NSA program by members and staff of both Intelligence Committees. Congressional leverage also led the Attorney General this past January to submit the terrorist surveillance program to the requirements of FISA, including appropriate review of Stateside surveillance requests by the Foreign Intelligence Surveillance Court. At the time this was viewed as a step toward some restoration of the rule of law and constitutional principles, and FISA reform efforts focused on modernizing the statute for technological purposes.

Yet, as noted in the Intelligence Committee's report on the FISA Amendments Act of 2007,

At the end of May 2007 . . . attention was drawn to a ruling of the FISA court . . . that the DNI later described as significantly diverting NSA analysts from their counterterrorism mission to provide information to the Court. In late July, the DNI informed Congress that the decision . . . had led to degraded capabilities in the face of a heightened terrorist threat environment.

FISA reform efforts quickly shifted to addressing this gap. Congress responded this past August by passing

the bipartisan Protect America Act, a law which cleared the Senate 60 to 28. Although an imperfect statute, it granted the DNI the tools necessary to protect our homeland at a time when there were well-documented gaps in our intelligence gathering. Congress wisely employed a 6-month sunset to ensure that the shortcomings of this temporary law could be explored at length and properly corrected. The bill before the Senate today is a product of that 4-month deliberation, and given all that I have just outlined, clearly the time has now come to take precise and concrete action.

The Intelligence Committee has been guided by its vast expertise in overseeing American intelligence operations, and this proposal sorts out the confusion of the past several years and replaces legal gray areas with clear bright line rules. Central to this revision is the role of the FISA Court—a critical step in this process, as the courts must play a prominent role whenever fourth amendment concerns are at stake.

The bill rightly maintains the rule that no court order is required when targeting communications abroad, and clarifies that this remains the case even if, for example, a foreign-to-foreign e-mail transits a server located on U.S. soil. However, the bill would, going forward, allow for so-called “umbrella surveillance” only under the following conditions: First, it may be conducted for 1 year. Secondly, the DNI and the Attorney General must certify that such operations would target only those individuals reasonably believed to be outside of the United States. Third, the FISA Court must receive and approve the minimization procedures to ensure that any “inadvertent collection” is promptly destroyed.

More importantly, where the target is located within the United States, or where the target is a U.S. citizen or a permanent resident anywhere in the world, the bill now requires that a warrant first be obtained from the FISA Court. The FISA Court—only the FISA Court—will have the authority to determine that there is probable cause to believe that the U.S. person in question is an agent of a foreign power. Only then may a warrant be issued, and only then may targeted surveillance commence. This is a strong and substantial improvement over the provisions of the Protect America Act.

It is noteworthy that this bill, if passed, would recognize for the first time ever the right of a U.S. citizen or permanent resident to be free from warrantless surveillance by the U.S. Government even when such person is abroad. As our colleague Senator WYDEN said in the Washington Post on December 10, this is a change that was contemplated back in 1978 but which never received the attention necessary from Congress to become law.

Finally, the bill authorizes the inspectors general of the Department of

Justice and elements of the intelligence community to conduct independent reviews of agency compliance with the court-approved acquisition and minimization procedures—adding another independent check to ensure that the agencies charged with implementing the program are in fact complying with the court order and minimizing any information that was inadvertently collected.

This is not to say that the Judiciary Committee substitute was not superior in some regards. For example, it contained far stronger language asserting that the FISA Court and the Federal Criminal Code are the exclusive means by which the U.S. Government may conduct surveillance, counteracting allegations by the administration that the 2002 authorization of the use of military force against Iraq provided an alternate statutory authority.

To be clear, the Intelligence Committee bill does state that such a restriction applies to “electronic surveillance.” In fact, I felt strongly about this provision, and that is why I joined other colleagues on the Intelligence Committee in submitting additional comments regarding this provision—specifically that FISA is the exclusive means by which the U.S. Government may conduct surveillance. Yet the Judiciary Committee bill took this one step further, expanding exclusivity to cover any “communications or communications information,” a broader term meant to reach even those communications not covered under the more narrowly defined category of “electronic surveillance.”

Yet, on balance, the Intelligence Committee legislation reflects the committee’s expertise in this field, and it presents a bipartisan approach for restoring order to the state of the law surrounding Government surveillance.

As the Intelligence Committee report noted, the committee held seven hearings in 2007 on these issues, received numerous classified briefings, propounded and received answers to numerous written questions, and conducted extensive interviews with several attorneys in the executive branch who were involved in the review of the President’s program. In addition, the committee received formal testimony from the companies alleged to have participated in the program and reviewed correspondence that was provided to private sector entities concerning the President’s program.

The committee secured IG reports and the orders and opinions issued by the FISA Court following the shift of activity to the judicial supervision of the FISA Court and invited comments from experts on national security law and civil liberties. The committee also examined extensive testimony given before other committees in the last several years and visited the NSA, carefully scrutinizing the program’s implementation.

The underlying committee bill vests significant authority—and rightfully

so—in the FISA Court to authorize targeting of U.S. persons and to sign off on minimization procedures of any nontargeting surveillance. It further modernizes FISA so that its terms apply rationally to today’s technology, and streamlines procedures to ensure that the men and women in our intelligence community can maximize their focus on detecting threats to our homeland. It does all of this while employing the Intelligence Committee’s technical expertise to avoid any unintended consequences.

I wish to focus the remainder of my remarks on what has become the flashpoint of controversy—whether to grant retroactive immunity to the numerous telecommunications companies who have been sued for allegedly providing private customer information to the Government in violation of the law. I believe that this narrow, limited grant of immunity is a proper course of action for these reasons:

First, it is critical to note and understand that a grant of immunity to telecom providers for assisting the Government is not a novel concept, but rather a longstanding component of existing law. Specifically, the Federal Criminal Code already states that “no cause of action shall lie in any court against any provider . . . for providing information, facilities, or assistance” to the Federal Government in conducting electronic surveillance if the company is presented with either a court order or a certification signed by the Attorney General stating that “no warrant or court order is required by law, that all statutory requirements have been met, and that the specific assistance is required.”

Why, then, must the bill before us contain an immunity provision for communications firms? The answer is that they are unable to invoke it because the very existence of whether a particular company—or any company—did or did not participate in any alleged surveillance has been designated as a state secret by the U.S. Government. This places the telecom companies in a Catch-22 scenario: if, hypothetically, a company did assist the Government, it cannot reveal that fact under the State Secrets Doctrine, and thus cannot claim the benefit of immunity; conversely, if a company did not provide any alleged assistance, it still cannot demonstrate that fact to conclusively dismiss the lawsuit, again because of the mandates of the State Secrets Doctrine. In the 40-plus active lawsuits, defendant telecom companies are in a “no-win situation.”

To those who may ask why Congress should concern itself with addressing these pending lawsuits, I would answer that the credibility and effectiveness of America’s intelligence community depends upon it. Particularly in the wake of the devastating attacks of September 11, 2001, any American company that, when reportedly presented with proper certification, assisted the Government in a matter of national secu-

rity was doing so, in all likelihood, in the best interests of our Nation. And punishing such cooperation through subsequent lawsuits could have drastic future consequences.

This position has been asserted by former Attorney General John Ashcroft and former Deputy Attorney General James Comey, both of whom had well-documented misgivings about the administration’s approach to surveillance. This view is also held by the distinguished chairman of the Intelligence Committee, who on October 31 of this year wrote in the *Washington Post* that the telecom lawsuits are “unfair and unwise. As the operational details of the program remain highly classified, the companies are prevented from defending themselves in court. And if we require them to face a mountain of lawsuits, we risk losing their support in the future”—a development that Chairman ROCKEFELLER assessed would be “devastating to the intelligence community, the Justice Department and military officials who are hunting down our enemies.”

The immunity provision in this bill is narrow and limited. First, it is only retroactive. It clearly delineates what types of surveillance require a search warrant from the FISA Court and what types do not. The very fact that the FISA Court will be involved contrasts starkly with the “gray area” under which the Terrorist Surveillance Program had operated prior to January of this year. This clarity will thus also make it clear as to whether a telecom company is complying with a lawful request and thus whether it will be entitled to statutory immunity.

As the Intelligence Committee report underscored, the action the committee proposes should be understood by the executive branch and provided as a one-time response to an unparalleled national experience in the midst of which representations were made that assistance to the Government was authorized and lawful.

In doing so, the underlying legislation acts prospectively to guard against any future infringements of constitutional liberties that might occur. By contrast, striking title II will accomplish nothing constructive in the future. To the contrary, as I indicated, it may be counterproductive by discouraging future cooperation by private entities.

Second, the bill only grants immunity for civil lawsuits. It would not provide amnesty to anyone—the telecommunications companies, Government officials or any other party—who engaged in any potential criminal wrongdoing. Should any criminal allegations arise against telecommunications officers, Government officials or others, such investigations would not be prevented by this provision. Nothing in this bill is intended to affect any of the pending suits against the Government or individual Government officials.

Third, this provision does not make any determination as to whether the

program in question was legal. It only grants the telecommunications carriers immunity if the Attorney General certifies those carriers cooperated with intelligence activities designed to detect or prevent a terrorist attack and that such a request was made in writing and with the assertion that the program was authorized by the President and determined to be lawful.

Finally, this bill provides the fairest course of action for addressing corporations that, when presented with an urgent official request at a critical period for our Nation's security, acted in a patriotic manner and provided assistance in defending this Nation. These companies were assured that their cooperation was not only legal but necessary and essential because of their unique technical capabilities. Also note that the President initially authorized the NSA program in the early days and weeks after the September 11 attacks, attacks that shocked our Nation and forced us to quickly react and adjust to the new reality of the 21st century, where terrorism was occurring in our own backyard. If a telecommunications company was approached by Government officials asking for assistance in warding off another terrorist attack and those Government officials produced a document stating the President had authorized that specific activity and that activity was regarded as legal, could we say the company acted unreasonably in complying with this request?

In the interest of protecting our Nation in this new environment of the 21st century and bringing stability and certainty to the men and women who are in our intelligence community as they carry out their very vital and critical missions in defending and preserving our freedoms at home, I urge passage of FISA reform that is bipartisan, that respects an active balance among all branches of Government, that will establish a key role for the courts going forward in evaluating surveillance measures in the United States and against U.S. persons abroad and that we will allow the intelligence community to devote its full efforts to fighting and winning the war on terror.

I yield the floor.

The PRESIDING OFFICER (Mr. PRYOR). The Senator from Oklahoma.

ORDER OF PROCEDURE

Mr. INHOFE. Mr. President, there is confusion as to the order of the speakers. I ask unanimous consent that the junior Senator from Pennsylvania, Mr. CASEY, be recognized for up to 15 minutes, in morning business, to be followed by me, to be recognized for up to 35 minutes in morning business.

The PRESIDING OFFICER. Is there objection?

Mr. CASEY. Reserving the right to object.

The PRESIDING OFFICER. The Senator is recognized.

Mr. CASEY. Will the Senator modify his request to add Senator WEBB to

that lineup to be the next Democratic speaker?

Mr. INHOFE. May I ask how long Mr. WEBB, the junior Senator from Virginia, wishes to speak?

Mr. CASEY. Ten minutes.

Mr. INHOFE. I amend my request that it be, first, Senator CASEY for 15 minutes, Senator WEBB for 10 minutes, and myself for 35 minutes in morning business.

This is the new request: I ask unanimous consent that the junior Senator from Pennsylvania, Mr. CASEY, be recognized for up to 15 minutes, after which I will be recognized for up to 35 minutes, and then the Senator from Virginia, Mr. WEBB, will be recognized for up to 10 minutes in morning business.

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

The Senator from Pennsylvania is recognized for up to 15 minutes.

Mr. CASEY. Mr. President, I thank the Senator from Oklahoma for working through that unanimous consent agreement.

IRAQ

Mr. CASEY. I rise today to speak about the war in Iraq. There is a lot of talk in this Chamber and across this town and across the country about our economy, and that is justifiable. But we have to remember that in the midst of a difficult economy in America, there is a lot to talk about and to work on to respond to that. We still have a war in Iraq to worry about, to debate, and to take action on. I don't think we can lose sight of a war that grinds on without end in Iraq.

This war does burden our troops, obviously, with repeated and prolonged deployments and, in fact, drains our national resources. The war hampers our efforts in places such as Afghanistan and Pakistan, the real frontlines in the global struggle against Islamic terrorism and extremism.

So we must ask ourselves at least a couple of questions when it comes to the war in Iraq. There are many, but there are at least a few I can think of.

What are we in the Congress doing about this war today, this week, this month, and in the months ahead, even as we struggle to deal with a difficult economy?

The second question might be: When will the Iraqi Government start serious discussions on national reconciliation?

Third, how will we know when we have achieved our objectives in Iraq? How will we know that?

Finally, and I think the most compelling question is: When will our troops come home?

Last night, the President spoke about a number of topics, and one was the economy. One of the first words the President said with regard to the economy, he talked about a time of uncertainty. Mr. President—President Bush I mean—I disagree. With regard to the economy, this is not about something

that is uncertain. It is very certain. The lives of Americans, the perilous and traumatic economy they are living through is not uncertain or vague or foggy. It is very certain. The cost of everything in the life of a family is going through the roof, and we have to make sure we respond to that situation.

I argue that word "uncertainty" does apply when it comes to the war in Iraq in terms of our policy. I would argue to the President what is uncertain, if there is uncertainty out there in our land, it is about the war in Iraq. Uncertainty, frankly, about what our plan is in Iraq and what is this administration and this Congress doing to deal with this war in Iraq. That is where the uncertainty is. I think the reality of the economy is very certain for American families.

While the headlines about Iraq have all but vanished from the front pages and television screens and the administration continues to divert attention elsewhere, we have a fundamental obligation as elected representatives of the American people to continue to focus on the war until we change the policy and bring our troops home.

We marked the first year anniversary of the President's decision to initiate a troop escalation in Iraq, and we are coming upon the fifth anniversary of the invasion of Iraq.

Last night, in his State of the Union Address, the President described the surge in very positive terms. Make no mistake about it—we all know this—our soldiers have succeeded in their mission with bravery and heroism and violence in many parts of Iraq is, in fact, down. Yet despite all that, despite all that effort, despite all that work, Iraq today is still not a secure nation, and it will not be secure until its leaders can leave the Green Zone without fear of assassination. It will not be secure until they can leave the Green Zone without fear of suicide bombings. It will not be secure until its own national Army and police forces can stand up and protect all of Iraq's people without regard to ethnicity or creed.

In assessing whether the surge has worked, we should pay attention to the President's words from a year ago. President Bush declared in January 2007, when he first announced the surge:

Iraqis will gain confidence in their leaders and the government will have the breathing space it needs to make progress in other critical areas.

Those are the President's words. So let's judge this issue by his words. Judged by those standards enunciated by the President, we can only conclude the surge has not worked, if that is what the objective was. I add to that, when I was in Iraq in August and I talked with Ambassador Crocker about the terminology used by this administration with regard to the war, because I said sometimes the terminology is way off and misleading, he said: The way I judge what is happening here is