seeking a 90-day supply, since the prescriptions are so much cheaper ordering them through Canada, there was not going to be the harassment of the confiscations.

That has dramatically changed. Over the course of the last week and a half, I have received over 100 complaints of senior citizens from all over Florida having their prescriptions, when ordered by mail or Internet from Canada, confiscated. This is serious business. This could be a matter of life and death for senior citizens who cannot afford to pay the retail price and are depending on that medicine in order to help them with whatever their ailments are—in some cases, life-threatening situations. Fortunately, we have not had any one of those reported to me, but the harassment has started.

I certainly hope there is no connection between this spike in the number of instances with Customs taking senior citizens' prescriptions. I hope there is no connection between that and trying to force senior citizens into the Medicare prescription drug benefit, the Medicare Part D. Naturally, seniors are quite resistant to the new plan.

We have talked in the Senate over and over, and I have offered amendments, all of which have had a majority vote, but under the parliamentary procedure of having to waive the Budget Act, I had to get 60 votes. I have gotten over 50 but not the 60 votes needed in order to delay the implementation of the prescription drug benefit, the deadline for signing up, which is May 15.

Naturally, seniors are resistant because they do not understand it. They are confused and in some cases bewildered. They have 40 to 50 plans to pick from. They are confused and they are frightened because if they do not pick a plan by the May deadline, they will be penalized 1 percent a month or 12 percent a year, or if they pick the wrong plan, they are stuck with that plan for a year and they have the fear that suddenly the need to change their prescription by their doctor may occur and the formulary they pick may not cover the new prescription.

This resistance is a fact. I hope we do not see any of this harassment connected with trying to force seniors into the prescription drug bill.

I call on the Department of Homeland Security, Customs, to stop harassing our senior citizens by confiscating their prescriptions for purchase of a short supply, which is bought at so much of a reduced cost.

That is not the total answer, just getting the drugs from Canada. That is bandaiding the problem. The problem is having a Medicare prescription drug benefit offered to senior citizens where Medicare can use its huge buying power of bulk purchases in order to bring down the price of the drugs, as the Veterans' Administration has been doing for the last two decades. But until we can get to that point, until we can change the law, until we can get the votes to change the law, in the meantime, some of our senior citizens who have trouble making financial ends meet have to buy their drugs through Canada at a much reduced price.

I bring this to the attention of the Senate. I bring it to the attention of Customs, as I have through correspondence. It is time to stop harassing our senior citizens.

I yield the floor and suggest the absence of a quorum.

The PRESIDING OFFICER (Mr. COLEMAN). The clerk will call the roll.

The assistant legislative clerk proceeded to call the roll.

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

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

Mr. MENENDEZ. I ask unanimous consent to have 12 minutes in morning business.

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

Mr. MENENDEZ. I thank the Chair.

(The remarks of Mr. MENENDEZ pertaining to the introduction of S. 2334 are located in today's RECORD under ''Statements on Introduced Bills and Joint Resolutions.'')

The PRESIDING OFFICER. The Senator from Texas is recognized.

ORDER FOR FILING DEADLINE

Mr. CORNYN. Mr. President, I ask unanimous consent that the filing deadline for all amendments to S. 2271 occur at 12 noon today.

The PRESIDING OFFICER. Is there objection?

Without objection, it is so ordered.

Mr. CORNYN. Mr. President, I yield back the remaining Republican time for morning business.

CONCLUSION OF MORNING BUSINESS

The PRESIDING OFFICER. Morning business is now closed.

USA PATRIOT ACT ADDITIONAL REAUTHORIZING AMENDMENTS ACT OF 2006

The PRESIDING OFFICER. Under the previous order, the Senate will resume consideration of S. 2271, which the clerk will report.

The bill clerk read as follows:

A bill (S. 2271) to clarify that individuals who receive FISA orders can challenge nondisclosure requirements, that individuals who receive national security letters are not required to disclose the name of their attorney, that libraries are not wire or electronic communication service providers unless they provide specific services, and for other purposes.

Pending:

Frist Amendment No. 2895, to establish the enactment date of the Act.

Frist Amendment No. 2896 (to Amendment No. 2895), of a perfecting nature.

The PRESIDING OFFICER. Under the previous order, the time until 12:30 p.m. will be equally divided.

The Senator from Texas is recognized.

Mr. CORNYN. Mr. President, I wish to speak about the USA PATRIOT Act. As you know, the Senate has recently agreed to another temporary extension of this act. We have twice since December been in a position of having to offer, instead of permanent reauthorization, a temporary fix. Yet at a time when so many in this body are continuing to talk about security, this one piece of legislation, in my humble opinion, has been more important in terms of protecting the security of the United States than anything else we have done since September 11.

This critical law, which, of course, provides law enforcement agencies with the vital tools necessary to fight and win the war on terror, should not be allowed to expire. I, frankly, am at a loss to explain why we are spending so much time trying to get to final closure on this legislation when the merits of the legislation seem to be so obvious—primarily by providing tools to law enforcement and intelligence agencies of this country, tools that are already in broad use in other aspects of law enforcement investigations.

Unfortunately, it seems to me that there has been a certain amount of hysteria whipped up over this to cause people to have unreasonable fear and concern about civil liberties, when, in fact, the balance between security and civil liberties has been struck in an entirely appropriate way in this legislation.

We must make it a top priority of the Senate to reauthorize this legislation as soon as possible, as it would be unconscionable to compromise the safety of the American people and undermine the progress we have made since 9/11 and delay critical investigations.

An agreement reached in December between the House and Senate conferees preserved the provisions of this act which have made America safer since 9/11 while increasing congressional and judicial oversight, which should alleviate the concerns of those who believe the law enforcement tools somehow endanger civil liberties. And even recently, the White House and leaders of the House and Senate have made additional concessions in an attempt to reach a final agreement to reauthorize the PATRIOT Act.

Unfortunately, it seems that there are a few who are continuing in their effort to stop reauthorization of the PATRIOT Act, insisting on imposing their will on a bipartisan majority of the Senate, the House, and the President of the United States. The handful of diehards who continue to oppose this legislation are simply unwilling to accept the compromise that has been agreed to by both Houses of Congress, despite efforts from all quarters to try to accommodate reasonable concerns. Most reasonable people would agree

that it is a practical impossibility for each legislator to get every single thing they want out of any particular piece of legislation, but that doesn't mean the American people should be left with nothing and be stripped bare of the protections the PATRIOT Act has been so effective at delivering.

The art of compromise is, at times, a bitter pill, particularly when matters of such profound consequence as our national security and waging the war on terror hang in the balance. I personally supported leaving sections 215, 213, and other provisions of the PATRIOT Act alone. I also wanted to add administrative subpoenas to the PATRIOT Act and to add judicial review for national security letters.

I also feel very strongly about ensuring that the 9/11 Commission's recommendations with regard to risk-based funding for homeland security grant moneys are implemented and personally pushed for such a provision during these negotiations. Senator SPECTER made it clear to me that he would try to seek consensus but that my demands would not be met in all regards.

While I did not get everything I wanted and while I believe what I wanted was in the best interests of my country, I support this bill. I am simply unwilling to return the American people to the pre-9/11 law enforcement tools which so poorly served our national interests at that time. And while this legislation is not perfect in every regard, it represents what I believe are the best efforts of the Congress to arrive at an acceptable compromise.

The national security has been well served by the PATRIOT Act since its original passage in a way that is both consistent with our national values and the protection of civil liberties. The war on terror must be waged in a manner consistent with American values and American principles.

The hysteria over this legislation is simply hard for me to understand. The fact that people in too many instances have not focused on the hard-fought attempts to balance our security and civil liberty concerns is, I believe, a disservice to the American people. This debate does not concern a typical policy disagreement about taxes or other issues; in fact, the stakes are much higher.

The PATRIOT Act was enacted in 2001 by an overwhelming bipartisan margin—98 to 1 in the Senate and 357 to 66 in the House. At that time, Senators on both sides of the aisle agreed that this legislation struck a wise and careful balance between national security and civil liberties.

The law, to date, has had a successful track record. In addition to helping prevent any terrorist attacks in this country since 9/11 and playing such a critical role in dismantling several terrorist cells within the United States, the Department of Justice inspector general has consistently found no systemic abuses of any of the act's provisions.

I support these recent concessions that have made this bill what it is today—and one in particular. Before these changes, a recipient of a 215 order seemingly could challenge the nondisclosure obligation at any time. The new revisions make clear that a recipient cannot challenge this requirement for 1 year, and it ensures that the conclusive presumption applies to these orders as well—something that was not clear before reaching this compromise agreement.

The remaining changes seemed to me to be quite sensible; that is, recipients of a 215 order or a national security letter do not have to tell the FBI that they have or will consult an attorney or that a library is not an electronic or wire communications provider unless, of course, they happen to be such a provider.

Prior to the PATRIOT Act, we know there were barriers that seriously hindered information sharing among law enforcement agencies and intelligence agencies, and those barriers imperiled our Nation. This was described by Patrick Fitzgerald in his testimony before the Senate Judiciary Committee. I quote:

I was on a prosecution team in New York that began a criminal investigation of Osama bin Laden in early 1996. The team—prosecutors and FBI agents assigned to the criminal case—had access to a number of sources. We could talk to citizens. We could talk to local police officers. We could talk to foreign police officers. Even foreign intelligence personnel. We could talk to foreign citizens. And we did all of those things as often as we could. We could even talk to al-Qaida members—and we did. We actually called several members and associates of al-Qaida to testify before a grand jury in New York. And we even debriefed al-Qaida members overseas who agreed to become cooperating witnesses. But there was one group of people we were not permitted to talk to. Who? The FBI agents across the street from us in lower Manhattan assigned to a parallel intelligence investigation of Osama bin Laden and al-Qaida. We could not learn what information they had gathered. That was the wall.

I am confident I am not the only one who is astounded at that statement. Consider our progress in the war on terror since the PATRIOT Act's enactment: Information sharing between intelligence and law enforcement personnel has been critical in dismantling terrorist operations, including the Portland Seven in Oregon, as well as a terrorist cell in Lackawanna, NY.

It has helped prosecute several people involved in an al-Qaida drugs-for-weapons scheme in San Diego, two of whom have already pleaded guilty.

Furthermore, nine associates of an al-Qaida-associated Northern Virginia violent extremist group were convicted and sentenced to prison terms ranging from 4 years to life.

Two Yemeni citizens have been charged and convicted for conspiring to provide material support to al-Qaida and Hamas.

An individual has been convicted of perjury and illegally acting as an agent of the former Government of Iraq by a jury in January of 2004.

And the executive director of the Illinois-based Benevolence International Foundation, who has had a long-standing relationship with Osama bin Laden, pleaded guilty to racketeering and furthermore admitted that he diverted thousands of dollars from his charity organization to support Islamic militant groups in Bosnia and Chechnya.

These tools simply must remain available to those on the front lines who continue to wage the war on terror. The very safety of our Nation depends on it.

I would like to share with my colleagues—and perhaps some of them have seen this op-ed piece—a piece written by Debra Burlingame, the sister of Charles F. ''Chic'' Burlingame III, the pilot of American Airlines flight 77 which crashed into the Pentagon on September 11, 2001. This op-ed was originally published in the Wall Street Journal, and I believe it articulates precisely why this legislation must be reauthorized without delay.

I will read an excerpt, and I ask unanimous consent that the complete op-ed be printed in the RECORD following my remarks.

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

(See exhibit 1.)

Mr. CORNYN. Mr. President, Ms. Burlingame writes:

A mere four-and-a-half years after victims were forced to choose between being burned alive and jumping from 90 stories, it is frankly shocking that there is anyone in Washington who would politicize the Patriot Act. It is an insult to those who died to tell the American people that the organization posing the greatest threat to their liberty is not al Qaeda but the FBI. Hearing any member of Congress actually crow about ''killing'' or ''playing chicken'' with this critical legislation is as disturbing today as it would have been when Ground Zero was still smoldering. Today we know in far greater detail what not having it cost us.

She continues:

The Senate will soon convene hearings on renewal of the Patriot Act—

And indeed we had those hearings—

and the NSA terrorist surveillance program. A minority of Senators want to gamble with American lives and ''fix'' national security laws which they can't show are broken. They seek to eliminate or weaken anti-terrorism measures which take into account that the Cold War in its slow-moving, analog world of landlines and stationary targets is gone. The threat we face today is a completely new paradigm of global terrorist networks operating in a high-velocity digital age using the Web and fiber-optic technology. After four-and-a-half years without another terrorist attack, these senators think we're safe enough to cave in to the same civil liberties lobby that supported that deadly FISA wall in the first place. What if they, like those lawyers and judges, are simply wrong?

Why should we allow enemies to annihilate us simply because we lack the clarity or resolve to strike a reasonable balance between

a healthy skepticism of government power and the need to take proactive measures to protect ourselves from such threats? The mantra of civil-liberties hard-liners is to ''question authority''—even when it is coming to our rescue—then blame that same authority when, hamstrung by civil liberties laws, it fails to save us. . . .More Americans should not die because the peace-at-any-cost fringe and antigovernment paranoids still fighting the ghost of Nixon hate George Bush more than they fear al Qaeda. Ask the American people what they want. They will say that they want the commander in chief to use all reasonable means to catch the people who are trying to rain terror on our cities. Those who cite the soaring principle of individual liberty do not appear to appreciate that our enemies are not seeking to destroy individuals, but rather whole populations.

She concludes:

The public has listened to years of stinging revelations detailing how the government tied its own hands in stopping the devastating attacks of September 11. It is an irresponsible violation of the public trust for members of Congress to weaken the Patriot Act or jeopardize the NSA terrorist surveillance program because of the same illusory theories that cost us so dearly before, or worse, for rank partisan advantage. If they do, and our country sustains yet another catastrophic attack that these antiterrorism tools could have prevented, the phrase ''connect the dots'' will resonate again—but this time it will refer to the trail of innocent American blood which leads directly to the Senate floor.

I urge my colleagues to heed the words of Ms. Burlingame. And today I join my voice with hers and the millions of Americans who are calling for us to do our duty and to do our utmost to protect this country and the American people.

Mr. President, I yield the floor.

EXHIBIT 1

[From opinionjournal.com, Jan. 30, 2006]

OUR RIGHT TO SECURITY

(By Debra Burlingame)

One of the most excruciating images of the September 11 attacks is the sight of a man who was trapped in one of the World Trade Center towers. Stripped of his suit jacket and tie and hanging on to what appears to be his office curtains, he is seen trying to lower himself outside a window to the floor immediately below. Frantically kicking his legs in an effort to find a purchase, he loses his grip, and falls.

That horrific scene and thousands more were the images that awakened a sleeping nation on that long, brutal morning. Instead of overwhelming fear or paralyzing self-doubt, the attacks were met with defiance, unity and a sense of moral purpose. Following the heroic example of ordinary citizens who put their fellow human beings and the public good ahead of themselves, the country's leaders cast aside politics and personal ambition and enacted the USA Patriot Act just 45 days later.

A mere four-and-a-half years after victims were forced to choose between being burned alive and jumping from 90 stories, it is frankly shocking that there is anyone in Washington who would politicize the Patriot Act. It is an insult to those who died to tell the American people that the organization posing the greatest threat to their liberty is not al Qaeda but the FBI. Hearing any member of Congress actually crow about ''killing'' or ''playing chicken'' with this critical legislation is as disturbing today as it would have been when Ground Zero was still smoldering. Today we know in far greater detail what not having it cost us.

Critics contend that the Patriot Act was rushed into law in a moment of panic. The truth is, the policies and guidelines it corrected had a long, troubled history and everybody who had to deal with them knew it. The ''wall'' was a tortuous set of rules promulgated by Justice Department lawyers in 1995 and imagined into law by the Foreign Intelligence Surveillance Act (FISA) court. Conceived as an added protection for civil liberties provisions already built into the statute, it was the wall and its real-world ramifications that hardened the failure-to-share culture between agencies, allowing early information about 9/11 hijackers Khalid al-Mihdhar and Nawaf al-Hazmi to fall through the cracks. More perversely, even after the significance of these terrorists and their presence in the country was known by the FBI's intelligence division, the wall prevented it from talking to its own criminal division in order to hunt them down.

Furthermore, it was the impenetrable FISA guidelines and fear of provoking the FISA court's wrath if they were transgressed that discouraged risk-averse FBI supervisors from applying for a FISA search warrant in the Zacarias Moussaoui case. The search, finally conducted on the afternoon of 9/11, produced names and phone numbers of people in the thick of the 9/11 plot, so many fertile clues that investigators believe that at least one airplane, if not all four, could have been saved.

In 2002, FISA's appellate level Court of Review examined the entire statutory scheme for issuing warrants in national security investigations and declared the ''wall'' a nonsensical piece of legal overkill, based neither on express statutory language nor reasonable interpretation of the FISA statute. The lower court's attempt to micromanage the execution of national security warrants was deemed an assertion of authority which neither Congress or the Constitution granted it. In other words, those lawyers and judges who created, implemented and so assiduously enforced the FISA guidelines were wrong and the American people paid dearly for it.

Despite this history, some members of Congress contend that this process-heavy court is agile enough to rule on quickly needed National Security Agency (NSA) electronic surveillance warrants. This is a dubious claim. Getting a FISA warrant requires a multistep review involving several lawyers at different offices within the Department of Justice. It can take days, weeks, even months if there is a legal dispute between the principals. ''Emergency'' 72-hour intercepts require sign-offs by NSA lawyers and preapproval by the attorney general before surveillance can be initiated. Clearly, this is not conducive to what Gen. Michael Hayden, principal deputy director of national intelligence, calls ''hot pursuit'' of al Qaeda conversations.

The Senate will soon convene hearings on renewal of the Patriot Act and the NSA terrorist surveillance program. A minority of senators want to gamble with American lives and ''fix'' national security laws, which they can't show are broken. They seek to eliminate or weaken anti-terrorism measures which take into account that the Cold War and its slow-moving, analog world of landlines and stationary targets is gone. The threat we face today is a completely new paradigm of global terrorist networks operating in a high-velocity digital age using the Web and fiber-optic technology. After four-and-a-half years without another terrorist attack, these senators think we're safe enough to cave in to the same civil liberties lobby that supported that deadly FISA wall in the first place. What if they, like those lawyers and judges, are simply wrong?

Meanwhile, the media, mouthing phrases like ''Article II authority,'' ''separation of powers'' and ''right to privacy,'' are presenting the issues as if politics have nothing to do with what is driving the subject matter and its coverage. They want us to forget four years of relentless ''connect-the-dots'' reporting about the missed chances that ''could have prevented 9/11.'' They have discounted the relevance of references to the two 9/11 hijackers who lived in San Diego. But not too long ago, the media itself reported that phone records revealed that five or six of the hijackers made extensive calls overseas.

NBC News aired an ''exclusive'' story in 2004 that dramatically recounted how al-Hazmi and al-Mihdhar, the San Diego terrorists who would later hijack American Airlines flight 77 and fly it into the Pentagon, received more than a dozen calls from an al Qaeda ''switchboard'' inside Yemen where al-Mihdhar's brother-in-law lived. The house received calls from Osama Bin Laden and relayed them to operatives around the world.

Senior correspondent Lisa Myers told the shocking story of how, ''The NSA had the actual phone number in the United States that the switchboard was calling, but didn't deploy that equipment, fearing it would be accused of domestic spying.'' Back then, the NBC script didn't describe it as ''spying on Americans.'' Instead, it was called one of the ''missed opportunities that could have saved 3,000 lives.''

Another example of opportunistic coverage concerns the Patriot Act's ''library provision.'' News reports have given plenty of ink and airtime to the ACLU's unsupported claims that the government has abused this important records provision. But how many Americans know that several of the hijackers repeatedly accessed computers at public libraries in New Jersey and Florida, using personal Internet accounts to carry out the conspiracy? Al-Mihdhar and al-Hazmi logged on four times at a college library in New Jersey where they purchased airline tickets for AA 77 and later confirmed their reservations on Aug. 30. In light of this, it is ridiculous to suggest that the Justice Department has the time, resources or interest in ''investigating the reading habits of law abiding citizens.''

We now have the ability to put remote control cameras on the surface of Mars. Why should we allow enemies to annihilate us simply because we lack the clarity or resolve to strike a reasonable balance between a healthy skepticism of government power and the need to take proactive measures to protect ourselves from such threats? The mantra of civil-liberties hard-liners is to ''question authority''—even when it is coming to our rescue—then blame that same authority when, hamstrung by civil liberties laws, it fails to save us. The old laws that would prevent FBI agents from stopping the next al-Mihdhar and al-Hazmi were built on the bedrock of a 35-year history of dark, defeating mistrust. More Americans should not die because the peace-at-any-cost fringe and antigovernment paranoids still fighting the ghost of Nixon hate George Bush more than they fear al Qaeda. Ask the American people what they want. They will say that they want the commander in chief to use all reasonable means to catch the people who are trying to rain terror on our cities. Those who cite the soaring principle of individual liberty do not appear to appreciate that our enemies are not seeking to destroy individuals, but whole populations.

Three weeks before 9/11, an FBI agent with the bin Laden case squad in New York learned that al-Mihdhar and al-Hazmi were in this country. He pleaded with the national security gatekeepers in Washington to launch a nationwide manhunt and was summarily told to stand down. When the FISA

Court of Review tore down the wall in 2002, it included in its ruling the agent's Aug. 29, 2001, email to FBI headquarters: ''Whatever has happened to this—someday someone will die—and wall or not—the public will not understand why we were not more effective and throwing every resource we had at certain problems. Let's hope the National Security Law Unit will stand behind their decisions then, especially since the biggest threat to us now, [bin Laden], is getting the most 'protection.'''

The public has listened to years of stinging revelations detailing how the government tied its own hands in stopping the devastating attacks of September 11. It is an irresponsible violation of the public trust for members of Congress to weaken the Patriot Act or jeopardize the NSA terrorist surveillance program because of the same illusory theories that cost us so dearly before, or worse, for rank partisan advantage. If they do, and our country sustains yet another catastrophic attack that these antiterrorism tools could have prevented, the phrase ''connect the dots'' will resonate again—but this time it will refer to the trail of innocent American blood which leads directly to the Senate floor.

Mr. CORNYN. Mr. President, I suggest the absence of a quorum.

The PRESIDING OFFICER. The clerk will call the roll.

The bill clerk proceeded to call the roll.

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

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

Mr. FEINGOLD. Mr. President, later today we will have a cloture vote on S. 2271. We should not end debate on this bill, and we should not pass this bill. Doing so will only help implement the deeply flawed deal that was struck with the White House to reauthorize the PATRIOT Act without enacting the core civil liberties protections for which so many of us have fought. So I urge my colleagues to vote no on cloture.

Everybody in this body wants to reauthorize the PATRIOT Act. Many of the expiring provisions are entirely noncontroversial. But we also need to fix the provisions that went too far, that do not contain the checks and balances necessary to protect our rights and freedoms. This reauthorization process is our chance to get it right, and moving forward with this bill takes us one step closer to wasting that chance.

Back in December, 46 Senators voted against cloture on the PATRIOT Act conference report. I think it is clear by now that the deal makes only minor changes to that conference report, which remains as flawed today as it was 2 months ago. The Senator from Pennsylvania, the chairman of the Judiciary Committee and the primary proponent of the conference report in this body, was quoted as saying that the changes that the White House agreed to were ''cosmetic.'' And then he said, according to the AP:

But sometimes cosmetics will make a beauty out of a beast and provide enough cover for Senators to change their vote.

Since this deal was announced, editorial pages of newspapers also have pointed out how minimal these changes are and have urged Senators not to change their votes. Let me read a few examples.

The editorial board of the Roanoke Times in Virginia had this to say on February 11:

A compromise that is expected to clear the way for the law's reauthorization is a victory of fear over strength. The ''compromise'' the White House and congressional leaders reached this week on reauthorization of the USA PATRIOT Act is a compromise of the basic freedoms that define this Nation. The Bush administration has made a few minor concessions, enough to give the handful of defiant Senate Republicans and some of their Democratic allies cover to extend the broad antiterrorism bill and claim they have done what they could to protect the civil liberties of innocent Americans. They have not.

That same day from the New York Times we heard this:

The PATRIOT Act has been one of the few issues on which Congress has shown backbone lately. Last year, it refused to renew expiring parts of the act until greater civil liberties protections were added. But key members of the Senate have now caved, agreeing to renew these provisions in exchange for only minimal improvements. At a time when the public is growing increasingly concerned about the lawlessness of the Bush administration's domestic spying, the Senate should insist that any reauthorization agreement do more to protect Americans against improper secret searches.

From my own home State, this is from the Wisconsin State Journal on February 18:

In recent weeks, Senators have worked with the White House to produce a compromise. However, the compromise remains far short of what is required to protect Americans' civil liberties. Regrettably, the Senate has backed down from its earlier stand and is poised to pass the inadequate bill.

These editorial boards and millions of Americans across the country recognize what everybody in this body already knows: that this deal makes only minor—yes, cosmetic—changes to the conference report that was blocked in December. The deal is woefully inadequate, and let me explain why.

I start by reminding my colleagues of the context for this deal. Back in November and December, when so many of us were fighting for improvements to the conference report, we made very clear what we were asking for. We laid out five issues that needed to be addressed to get our support, and I am going to read quickly excerpts from a letter we sent explaining our concerns because I think it will help demonstrate why this deal is so bad and so inadequate. Here are the problems we identified and the changes we asked for several months ago.

On section 215, we said:

The draft conference report would allow the Government to obtain sensitive personal information on a mere showing of relevance. This would allow Government fishing expeditions. As business groups like the U.S. Chamber of Commerce have argued, the Government should be required to convince a judge that the records they are seeking have some connection to a suspected terrorist or spy.

Next, we discussed gag orders, both for section 215 orders and national security letters:

The draft conference report does not permit the recipient of a section 215 order to challenge its automatic, permanent gag order. Courts have held that similar restrictions violate the First Amendment. The recipient of a section 215 order is entitled to meaningful judicial review of the gag order.

The draft conference report does not provide meaningful judicial review of an NSL's gag order. It requires the court to accept as conclusive the Government's assertion that a gag order should not be lifted, unless the court determines the Government is acting in bad faith. The recipients of NSLs are entitled to meaningful judicial review of a gag order.

We then moved on to national security letters more generally. The draft conference report does not sunset the NSL authority. In light of recent revelations about possible abuses of NSLs, the NSL provision should sunset in no more than 4 years when the Congress will have an opportunity to review the use of this power.

Finally, we addressed sneak-and-peek search warrants. The draft conference report requires the Government to notify the target of a sneak-and-peek search no earlier than 30 days after the search rather than within 7 days as the Senate bill provides and as pre-PATRIOT Act judicial decisions required. The conference report should include a presumption that notice will be provided within a significantly shorter period in order to protect fourth amendment rights. The availability of additional 90-day extensions means that a shorter initial timeframe should not be a hardship on the Government.

Again, these quotes are from a letter we sent late last year. Now, you might ask, in this newly announced deal on the PATRIOT Act, have any of these five problems been solved?

The answer is no, not a single one. Only one of these issues has even been partially addressed by this deal, but it has not been fixed.

This deal only makes a few small changes. First, it would permit judicial review of section 215 gag orders, but under conditions that would make it very difficult for anyone to obtain meaningful judicial review. Under the deal, judicial review can only take place after a year has passed, and it can only be successful if the recipient of the section 215 order proves that the Government has acted in bad faith. As many have argued in the context of the national security letters, now that is a virtually impossible standard to meet. We need meaningful judicial review of these gag orders, not just the illusion of it.

Second, the deal would specifically allow the Government to serve national security letters on libraries if the library comes within the current requirements of the NSL statute. This is a provision that appears to just restate current law. Even the American

Library Association has called it nothing other than a fig leaf.

Third, the deal would clarify that people who receive a national security letter or a section 215 order would not have to tell the FBI if they consult with an attorney. Now, this last change is a positive step, but it is only one relatively minor change. So that is what we are left with: one relatively minor improvement. That is nowhere near enough.

Ordinarily, when we debate a flawed bill such as this one, we at least have the chance to improve it on the Senate floor by offering amendments, and I have been trying to do just that to make sure we don't miss the opportunity to address the core problem with the PATRIOT Act that so many of us have been fighting to fix. Before the recess, I filed four amendments to S. 2271, but I was prevented from calling them up because the majority leader used the procedural tactic of filling the amendment tree in order to prevent Senators from offering and getting votes on amendments. Using procedural maneuvers like this to prevent the Senate from debating and voting on amendments is an insult to the institution, and it is an insult to every one of my colleagues. We are being told that we have no choice but to accept the deal that a few Members cut with the White House, without being allowed to even try to change a single word.

We do have a choice—to oppose cloture on this bill and insist that any deal include meaningful civil liberties protections. I don't know if the majority leader fears that my amendments would actually pass or if he just wants to protect Senators from having to explain why they oppose basic protections for law-abiding Americans, but that should not be how the Senate does its business. Offering, debating, and voting on amendments is what the Senate is supposed to be all about. That is how we are supposed to craft legislation. Trying to ram this deal through without a real amending process is a cynical maneuver that we should all reject, regardless of how we may feel about the merits of the bill.

If my colleagues want to vote against my amendments, that is their right. But no one has the right to turn this body into a rubberstamp.

Let's take a step back and consider the process that got us here today. As we know, conference reports are not amendable. They come to this body as a take-it-or-leave-it proposition. Those are the rules, and we all understand them and play by them. In December, we understood that. In December, we just said no. We said no to the PATRIOT Act conference report.

Now we have a new bill, the product of a side deal with the White House, that is essentially an amendment to the conference report. It is even drafted that way. Each section of the bill amends the underlying law, as amended by the conference report. That is right. The bill we are considering today amends a law that hasn't even been passed by the Senate, much less signed into law. As I understand it, this bill, should both Houses of Congress pass it, will have to sit on the President's desk unsigned until the President signs the conference report bill into law.

The proponents of this deal want to effectively amend the conference report which couldn't pass the Senate in December, even though conference reports are unamendable, and they want to do it by circumventing the regular legislative process with a bill that no one is being allowed to amend, even though the bill did not go through committee, let alone a conference. How is that fair? Why should a handful of members of this body be able to amend an unamendable conference report with a deal struck by the White House, and then prevent the Senate from working its will on that deal?

How can one group of Senators amend the conference report but prevent other Senators from trying to do the same thing? How is that possible?

The answer is that it is not possible unless the Senate lets it happen. And the vote we will have later today is the vote where we will find out if the Senate will let it happen.

I hope even colleagues who may support the deal will oppose such a sham process. It makes no sense to agree to end debate without a guarantee that we will be allowed to actually try to improve the bill, and it is a discourtesy to all Senators, not just me, to try to ram through controversial legislation without the chance to improve it.

My amendments are limited and reasonable. I spoke about them at length before the recess, but let me just take a few minutes to explain again what they would do.

First, amendment No. 2892 would implement the standard for obtaining section 215 orders that was in the Senate bill that the Judiciary Committee approved by a vote of 18 to 0, and that was agreed to in the Senate without objection. This is obviously a very reasonable amendment that every Senator in one way or another has basically supported.

It took hard work, but the Judiciary Committee came up with language on section 215 that protects innocent Americans, while also allowing the Government to do what it needs to do to investigate and prevent terrorism. The Senate standard would require the Government to convince a judge that a person has some connection to terrorism or espionage before obtaining their sensitive records.

The Senate standard is the following: One, that the records pertain to a terrorist or spy; two, that the records pertain to an individual in contact with or known to a suspected terrorist or spy; or—and I emphasize ''or''—three, that the records are relevant to the activities of a suspected terrorist or spy. That is the standard my amendment would impose.

This would not limit the types of records that the Government could obtain, and it does not go as far to protect law-abiding Americans as I might prefer, but it would make sure the Government cannot go on fishing expeditions into the records of innocent people.

The conference report did away with this delicate compromise, replacing the three-prong test with a simple and quite broad relevance standard which could arguably justify the collection of all kinds of information about perfectly law-abiding Americans.

Of all the concerns that have been raised about the PATRIOT Act since it was passed in 2001, section 215 is the one that has received the most public attention, and rightly so. A reauthorization bill that doesn't fix this provision, in my view, has no credibility.

My second amendment is amendment No. 2893, which would ensure the recipients of business records orders under section 215 of the PATRIOT Act and also recipients of national security letters can get meaningful judicial review of the gag orders they are subject to.

Under the conference report, as modified by the Sununu bill, recipients of these documents would theoretically have the ability to challenge the gag orders in court, but the standard for getting the gag orders overturned would be virtually impossible to meet. In order to prevail in challenging the NSL or section 215 gag order, the recipient would have to prove that any certification by the Government that disclosure would harm national security or impair diplomatic relations was made in bad faith. There would be what many have called a conclusive presumption that the gag order stands, unless the recipient can prove that the Government acted in bad faith. Again, I simply don't think that anyone could reasonably call this meaningful judicial review.

My amendment would eliminate the bad faith showing currently required for overturning both section 215 and NSL gag orders. And it would no longer require recipients of section 215 orders to wait a year before they can challenge the accompanying gag orders, which is actually a new requirement in the Sununu bill.

My third amendment, amendment No. 2891, would add to the conference report one additional 4-year sunset provision. It would sunset the national security letter authorities that were expanded by the PATRIOT Act. It would simply add that sunset to the already existing 4-year sunsets that are in the conference report with respect to section 206, section 215, and the so-called lone wolf provision.

National security letters, or NSLs, are finally starting to get the attention they deserve. This authority was expanded by sections 358 and 505 of the PATRIOT Act. The issue of NSLs has flown under the radar for years, even though many of us have been trying to bring more public attention to it.

National security letters are issued by the FBI to businesses to obtain certain kinds of records without any—any—sort of court approval whatsoever. NSLs can be used to obtain three types of business records: subscriber and transactional information related to Internet and phone usage; credit reports; and financial records, a category that has been expanded to include records from all kinds of everyday businesses such as jewelers, car dealers, travel agents, and even casinos. This is a very broad power. I can think of no reason Congress would not want to place a sunset on these authorities to ensure we have the opportunity to take a close look at them.

Finally, my fourth amendment, amendment No. 2894, concerns so-called sneak-and-peek searches, whereby the Government can secretly search people's houses in everyday criminal investigations and not provide notice of the search until afterward. The key issue here is how long the Government should be allowed to wait, at least in most cases, before it notifies individuals that their homes have been searched. The Senate bill said 7 days, 7 days should be the presumption, with the ability to get extensions if necessary, but the conference report does away with that and instead allows a delay of 30 days in most cases.

My amendment would restore the key component in the Senate compromise by requiring that subjects of sneak-and-peek searches be notified of the search within 7 days unless a judge grants an extension of that time because there is good reason to still keep the search secret.

It makes no other change in the conference report other than changing 30 days to 7 days.

Those are my amendments. They are eminently reasonable. They are consistent with provisions that we approved in the Senate last year or they were central to the concerns raised by so many Senators late last year. So these are obviously not extreme ideas, and the Senate should be allowed to vote on these four amendments. All of us have as much right as the Senators who struck a deal with the White House to try to amend the conference report.

I am happy to report that the Senator from Pennsylvania, the chairman of the Judiciary Committee, thinks these are reasonable amendments, too. In fact, he thinks they are so reasonable that late yesterday he announced that he is going to combine them into a single bill and introduce it today and try to move it through the Judiciary Committee. That is right. The chairman of the Judiciary Committee, the chief proponent in this body of the PATRIOT Act reauthorization conference report and of the White House deal the Senate is being asked to ratify, has taken the four amendments I just described and, with a few minor tweaks, he has introduced them as a bill.

I must say, I guess I am flattered and, of course, I will support that bill, but there is an alternative to the lengthy and uncertain legislative process that awaits the chairman's new bill, and that is to simply allow the Senate to vote on my amendments this week. The chairman could offer them with me. We could make a pretty powerful team on this issue, maybe. We have the perfect and logical vehicle for these amendments to the PATRIOT Act before us right now. All we need to do is add the chairman's reasonable proposals to this bill and send it to the House, where it would almost certainly pass if the leadership would simply allow it to be voted on.

These provisions, most of which come right out of the bill that passed the Senate without objection last July, could become law in a matter of weeks rather than a year or more from now, if ever.

My amendments and Senator SPECTER's bill are simply what the bipartisan group asked for back in December when we blocked the PATRIOT Act reauthorization conference report. Our requests were reasonable then, and they are reasonable now. The only reason we are considering a package that doesn't include them is that the White House played hardball, and the decision was made by some to capitulate.

Mr. President, I oppose the flawed deal we are being asked to ratify, and I oppose the sham process that the Senate is facing here. We still have not fixed some of the most significant problems of the PATRIOT Act, and if we allow the conference report to go through, the chairman's sincere hopes notwithstanding, I fear that we will lose that chance for at least another 4 years. So I must oppose cloture on this bill, which will allow the deal to go forward.

Before I yield the floor, let me ask one more time for unanimous consent to set the pending amendments aside so that I may call up amendment No. 2892, the amendment to modify the standard for section 215 orders.

The PRESIDING OFFICER. In my capacity as Senator from New Hampshire, I object.

Objection is heard.

Mr. FEINGOLD. Mr. President, that objection says it all. I urge my colleagues to vote no on cloture, not only because this deal is flawed but also because of the tactics being used to prevent votes on reasonable, relevant amendments—reasonable, relevant amendments that would improve the flawed bill we are debating.

I yield the floor and I suggest the absence of a quorum.

The PRESIDING OFFICER. The clerk will call the roll.

The legislative clerk proceeded to call the roll.

Mr. SUNUNU. Mr. President, I ask unanimous consent that the order for the quorum call be dispensed with.

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

Mr. SUNUNU. Mr. President, I want to speak briefly about the bill before us, a bill that I introduced and the details of which I helped work out over a period of 5 or 6 weeks following the delay of the conference report to reauthorize the PATRIOT Act at the end of last year.

I recognize that this legislation, like almost any piece of legislation that is dealt with in Congress and in the Senate, in particular, represents a compromise. If you pursue every piece of legislation insisting that you get everything you asked for in that bill, in all likelihood you will never get anything you are seeking, and you certainly would not be able to count on the long-term support of others in this institution who might have requests or initiatives with which you might not agree. A compromise is always necessary.

But I think in this case the legislation represents a substantial step forward in terms of better safeguarding our civil liberties from where we were with the current law and, equally important, allows us to lock in, to get enacted into law a number of other improvements that many of us worked very hard on in a bipartisan way.

I understand that Senator FEINGOLD doesn't support the legislation. That is certainly his right, his prerogative. But I think he shortchanges the nature of these improvements.

I want to touch on the three elements of this bill so that all Senators and the public understand how these three provisions take us forward. Maybe the agreement represented in this bill does not move us as far forward as he or I or others in the Senate might like, but its moves us forward nonetheless.

First, in this bill, we create an explicit review of the gag order that accompanies a 215 subpoena. He has criticized the fact that there is a 12-month waiting period for taking that gag order before a judge.

In our legislation, the SAFE Act, we had a 3-month waiting period. We asked for a 3-month waiting period, and we ended up with a 12-month waiting period. That is the nature of compromise, but we did get an explicit judicial review of the gag order. I think the principle that any gag order be given an opportunity for review before a judge is not only a step forward but a victory on principle, which is extremely important in this legislation, and I think it will guide us in the future when we might deal with similar questions.

Second, we struck a provision in the delayed conference report that requires the recipient of a national security letter to disclose the name of their attorney to the FBI. That is a provision that doesn't occur anywhere else in the law. It is a provision that I think could have discouraged people from seeking legal advice. And in the case of a national security letter—a subpoena issued without the approval of a judge—we are not talking about a few

dozen subpoenas or a few dozen individuals or businesses affected; we are talking about tens of thousands. Striking that requirement regarding the recipient of an NSL notifying the FBI the name of their attorney, I think, again, is a very important step forward not only in encouraging people to seek legal advice but also a very important principle to set down in this bill.

A third improvement which was not even considered in the remarks of Senator FEINGOLD is clarification that a library engaged in the traditional role of lending books, providing books to patrons in digital format, or providing access to the Internet, is not subject to a national security letter. This is an important clarification of congressional intent, an important clarification of the existing law which, unfortunately, is not clear on this point.

It is not clear because the underlying law uses definitions that were written 20 years ago before the age of the Internet. I hope the Judiciary Committee will take up a full review and evaluation of the definitions and the standards regarding technology and the underlying law that is referenced here. In lieu of that, the least we can do is provide clarification as to how and when this law applies to institutions such as libraries. We have done so in a positive and meaningful way.

There are two areas Senator FEINGOLD mentioned where we had not made progress. I am more than willing to recognize we did not get everything asked for, even as we significantly improved the conference report. One is the standard of conclusive presumption which is a standard he does not support. I do not support imposing this standard of inclusive presumption for overturning the 215 and NSL gag orders, but the fact remains, as was pointed out by Chairman SPECTER during our original debate at the end of last year, that this is a standard that was in the Senate bill that was passed unanimously last summer. It is quite challenging tactically to try to negotiate out a provision that all Senators supported and voted for in the original Senate bill.

The second issue is the most problematic, the one where I would like to have made more progress. That is in changing the standard for getting a 215 subpoena from one of mere relevance to terrorism investigation, as is the current law and the standard in the conference report, to having a clear connection to a suspected or known terrorist or foreign power. We did not succeed in getting an improvement to the standard itself. However, through the course of negotiations, because of the work done by me and Senator FEINGOLD and others, we were able to get other requirements and criteria to be met by the government before a 215 subpoena can be issued which I will speak to in a moment.

These three provisions, again, are significant steps forward from the delayed conference report. They are a step forward in the very areas that were raised as concerns at the end of the session. In conversations with Senator FEINGOLD and Senator CRAIG and others after we defeated cloture on the conference report in December, we came back to the four priorities about which most of our discussions with the administration took place. We made progress on two of those priorities and added the provision clarifying the applicability of national security letters to libraries. That is a real success, indeed.

It is unfortunate in this debate on the underlying bill has included language such as ''capitulation'' and ''caving.'' But it certainly does not bother me. I am very comfortable with the process we used to get these improvements. I am certainly very comfortable with the stand I took, the priorities I raised, and the end result as far as this reauthorization process goes. The conference report is a significant improvement over current law and the bill before us today is a significant improvement to the conference report. However, it is unfair to those Members who might not have had the opportunity to work directly on these issues in Judiciary or directly in our working group but feel this is a good, appropriate improvement and a good compromise, to suggest that they are only changing their vote for political reasons. There were many individuals—Democrats and Republicans—who were never willing to take a stand on this issue, even though they may have agreed with Senator FEINGOLD, me, or others, about our concerns. They may have wished the issue would go away. There were some Members who claimed to support us but, frankly, when given the opportunity to weigh in with the administration or to help move the process forward, they chose not to.

It is unfair to criticize those who worked with us—Democrats and Republicans—to push this issue forward, to make these improvements, to suddenly bring their motivation into question when they decide to support a compromise. I do not think that serves the institution of the Senate well, especially as we had before the recess a 93-to-6 vote to move forward. We have leadership on both sides of the aisle supporting this package. I think the ultimate vote on final passage of my bill and the delayed conference report will yield a very strong bipartisan agreement also.

We can take issue with the level of progress that was made, we can take issue with the underlying substance of the original PATRIOT Act, the conference report, or these additional improvements, but everyone I have dealt with in this process has worked in a very direct, straightforward way. There has been a desire to find common ground, and in finding that common ground, to come to a consensus that allowed this conference report to move forward.

In addition to the three improvements I described, we had previously gained improvements in a number of other areas in the conference report. I talked about the 215 standard and the fact we were not successful in changing the standard as it exists in current law. We were successful, though, in getting into the conference report the requirement that a statement of facts is provided, a statement of articulable facts supporting the 215 subpoena request. We now have minimization requirements in the conference report that require the Justice Department to eliminate extraneous information, information collected on innocent Americans, and to report to Congress exactly how that is done. We were successful in adding clarity to the roving wiretap provision so it is less likely to be abused or misused. We were able to improve the sneak-and-peek search warrant.

Senator FEINGOLD indicated we supported a 7-day notification period. In the bill we have a 30-day notification period. The original PATRIOT Act contains no specific requirement on notice other than that notice must be given to the subject of a search ''in a reasonable amount of time,'' which I think everyone would recognize leaves things to the whim of a prosecutor or a judge unnecessarily.

We have 4-year sunsets for the most controversial provisions of this bill, including the 215 subpoena power, the roving wiretaps, and the lone wolf provisions.

Through the work of Senator LEAHY, in particular, we were able to get a criminal penalty for inadvertent disclosure of national security letters dropped from the conference report. All of these represent significant changes from the original act, significant changes included in the conference report. And in addition to the three changes in this underlying legislation, we have a better product and one that will receive strong bipartisan support.

I look forward to passage of the bill. I was pleased to work with my colleagues on both sides of the aisle in getting this done. In doing so, in forcing us to take more time and forcing the administration to add additional protections for civil liberties to the legislation and putting together a bipartisan group willing to demand these things, we sent an important message, a message that we have a group willing to work in Congress to achieve these improvements and a message to the administration that when we are dealing with these issues, they need to be engaged and active and working toward consensus from the very beginning of the process.

I yield the floor and suggest the absence of a quorum.

The PRESIDING OFFICER. The clerk will call the roll.

The assistant legislative clerk proceeded to call the roll.

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

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