

MORNING BUSINESS

Mr. SCHATZ. Mr. President, I ask unanimous consent that the Senate proceed to a period of morning business, with Senators permitted to speak for up to 10 minutes each.

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

FOIA IMPROVEMENT ACT

Mr. ROCKEFELLER. Mr. President, I ask unanimous consent to engage in a colloquy with Senator LEAHY of Vermont, chairman of the Senate Judiciary Committee, regarding S. 2520, the FOIA Improvement Act of 2014.

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

Mr. ROCKEFELLER. I thank Senator LEAHY for attempting to address my concerns about this bill. I thank his committee staff for working with my committee staff to insert clarifying report language.

Mr. LEAHY. I would like to acknowledge the chairman of the Senate Committee on Commerce, Science, and Transportation for highlighting important concerns of the agencies his committee works with closely. This legislation seeks to further the goal of government transparency; but we also understand the need for government agencies to dutifully and carefully fulfill their responsibilities.

Mr. ROCKEFELLER. From the beginning, I have recognized that this bill would make important changes to the Freedom of Information Act. My concerns have been rooted in the possible unintended consequences this bill would have on consumer protection. I was concerned this bill would make it harder for our consumer protection agencies to bring enforcement actions against corporate wrongdoers.

Specifically, I am concerned that requiring government law enforcement agencies to show foreseeable harm that is not “speculative or abstract” when invoking FOIA exemptions for attorney-client, work-product, and deliberative process privileges will undermine law enforcement efforts.

Hundreds of years of American legal tradition has generally protected work-product documents and attorney-client communications from the discovery process in civil litigation. Further, the deliberative process privilege has allowed government agencies’ law enforcers to freely exchange ideas and legal strategies as part of their internal decision making process.

I am concerned that the bill could have a “chilling effect” on internal communications and deliberations of agencies’ law enforcement personnel who are preparing law enforcement actions against alleged wrongdoers, in order to avoid the prospect of increased litigation.

We do not want to hinder the robust, internal exchange of rigorous ideas and legal strategies within government agencies when they are bringing enforcement actions.

Given this, courts should review agency law enforcement decisions on the new foreseeable harm standard under an “abuse of discretion” standard.

Mr. LEAHY. At Senator ROCKEFELLER’s request we have included language in the committee report on the abuse of discretion standard and its application to make clear that it is the intent of Congress that judicial review of agency decisions to withhold information relating to current law enforcement actions under the foreseeable harm standard be subject to an abuse of discretion standard.

Mr. ROCKEFELLER. Furthermore, if we are going to potentially burden our government agencies with increased costs that will be associated with complying with the bill, then I think Congress should also provide these agencies with sufficient funding to deal with what is sure to be an increased workload.

While I still have concerns about this bill’s effect on consumer protection, I think the accommodation made by Senator LEAHY will help. I thank him for inserting clarifying language in the report with regard to this congressional intent on review of information withheld under the foreseeable harm standard.

Mr. JOHNSON of South Dakota. Mr. President, I ask consent to engage in a colloquy with Senator LEAHY, chairman of the Senate Judiciary Committee, regarding important aspects of S. 2520, the FOIA Improvement Act of 2014.

While I support the ultimate goal of this legislation, which seeks to increase government transparency, as the chairman of the Senate Banking Committee, I am also mindful of the need for government agencies to dutifully and carefully fulfill their oversight responsibilities of our Nation’s financial institutions and the health and welfare of our financial systems at large. Financial regulatory agencies are tasked with ensuring the safety and soundness of the financial system, compliance with Federal consumer financial law, and promoting fair, orderly, and efficient financial markets. A critical component of effective oversight is the ability of a financial regulator to have unfettered access to information from a regulated institution. A financial institution should not have to fear that its regulator will be unable to protect the institution’s confidential information from disclosure. Since the passage of the Freedom of Information Act, Congress has recognized the importance of protecting this type of supervisory information as evidenced specifically in 5 U.S.C. § 552(b)(8), commonly referred to as Exemption 8, and more generally in other exemptions. It is my understanding that nothing in S. 2520 is intended to limit the scope of the protections under Exemption 8, or other exemptions relevant to financial regulators; nor is the bill intended to require release of confidential informa-

tion about individuals or information that a financial institution may have, the release of which could compromise the stability of the financial institution or the financial system, or undermine the consumer protection work by the regulators. Given that the release of confidential or sensitive information relating to oversight of regulated entities could cause harm to such entities, individuals, or the financial system, a financial regulatory agency could reasonably foresee that disclosure of such information requested under FOIA may harm an interest protected by Exemption 8. This is precisely why Congress continues to provide these statutory exemptions.

Mr. LEAHY. I thank Senator JOHNSON for his remarks and for his interest and support for this legislation. I agree that it is important to ensure that our financial regulators are able to do the work required to maintain the safety and soundness of our financial institutions. I also agree that the free flow of information between regulators and financial institution is important to this process. Exemption 8 was intended by Congress, and has been interpreted by the courts, to be very broadly construed to ensure the security of financial institutions and to safeguard the relationship between financial institutions and their supervising agencies. The proposed amendments to the Freedom of Information Act, FOIA, are not intended to undermine the broad protection in Exemption 8 or to undermine the integrity of the supervisory examination process. Moreover, much of the information that the government is permitted to withhold under Exemption 8, is also protected under Exemption 4, which exempts from disclosure commercial and financial information that is privileged or confidential. Exemption 4 covers information prohibited from disclosure under the Trade Secrets Act and similar laws, and as such does not provide for discretionary disclosure under FOIA. As with other exemptions that are based on separate legal restrictions, it is understood that the foreseeable harm standard will not apply to most of the information falling under Exemption 4. I will address these concerns, and I appreciate all the time and attention the Senator from South Dakota has given to this important legislation.

Mr. JOHNSON of South Dakota. I thank the Senator from Vermont for his work on this important matter and for working with me to clarify the scope of this bill. I hope the Senator from Vermont continues to work on these issues with the agencies to ensure that this new standard will not serve to undermine the broad protections currently afforded to confidential supervisory information and in turn undermine the cooperative relationship between regulators and their supervised institutions.

TRIBUTE TO MARK PRYOR

Ms. STABENOW. Mr. President, today we honor the dedicated public service of my dear friend and colleague, Senator MARK PRYOR from Arkansas.

For MARK PRYOR, public service is a calling—one that goes to the roots of who he is. MARK PRYOR is the fifth generation in his family to serve in public office.

Beholden to no party, no special interests, Senator PRYOR's singular objective in Washington has been to make lives better for the people of the State his family calls home. The sign on his desk says "Arkansas comes first." It was his father's campaign slogan a generation ago, and that's the priority that guided MARK PRYOR from the day he arrived in the Senate.

When Senator PRYOR learned that a widow in Greenwood, AR, was being deprived death benefits because her husband died at home, instead of in combat, Senator PRYOR crafted an amendment to change that Pentagon rule, restoring the full death benefit for the widow—and fixing it permanently so it would be available to other surviving spouses.

A deeply patriotic man, with a profound respect for those who serve, Senator PRYOR is the author of the HIRE At Home Act, which encourages companies to consider military experience for servicemembers reentering the workforce.

But he has also fought to bring down the costs of Arkansans' prescriptions and to protect the social safety net. When FEMA demanded back pay for Federal disaster aid it provided to Arkansas, Senator PRYOR made sure the rule got changed.

And I was honored this past year to partner with Senator PRYOR on the Bring Jobs Home Act, to prevent companies from being rewarded for shipping jobs overseas and giving them an incentive to bring those jobs that have left our borders back home again.

Of course, Senator PRYOR served as chairman of the Senate Appropriations Subcommittee on Agriculture, Rural Development, Food and Drug Administration and Related Agencies. So as author of the 2014 Farm Bill, I relied on Senator PRYOR as a partner. He introduced the Forest Products Fairness Act, which helps timber farmers in Arkansas and across the Nation qualify for USDA's BioPreferred Program.

During an age of partisan strife, Senator PRYOR has provided sanctuary for those who seek compromise. I share the sentiment he expressed in his farewell address—it is imperative that we come to work not wearing jerseys of red or blue but ones that have red, white and blue.

It saddens me that my dear friend, Senator PRYOR, cannot join us in this enterprise, because he has truly been a voice of civility and reason. But I have no doubt he will find new ways to serve the country and the State that he loves.

I wish him Godspeed in his future efforts.

SSCI STUDY OF THE CIA'S DETENTION AND INTERROGATION PROGRAM

Mr. HARKIN. Mr. President, I would like to personally commend Senator FEINSTEIN for releasing this report today. We have all heard the Justice Louis Brandeis quote that "sunlight is the best disinfectant" but occasionally we need a real world reminder. Today, Senator FEINSTEIN and the members and staff of the Intelligence Committee have provided that. The findings of this report are truly remarkable, laying bare that the CIA interrogation program was simultaneously far more brutal and far less effective than previously claimed.

This 600-page report is long overdue and makes clear that the CIA's so-called "enhanced interrogation techniques" failed to produce any otherwise unavailable intelligence that saved lives. At no time were these coercive interrogation techniques effective.

But more critically, this report makes clear to all Americans that what took place was not in keeping with our ideals as a nation. We have no greater duty than to protect the American people and our national security. But the single best way to do that is—and always has been—to do that in a manner consistent with our laws and our traditions. Horrific and torturous practices are explicitly prohibited and are never necessary. I thank Senator FEINSTEIN, Senator UDALL and other members of the committee for the months and years they have committed to making this release a reality.

Ms. MIKULSKI. Mr. President, I rise today to speak on the release of the declassified Senate Select Intelligence Committee report on the CIA's past rendition, detention and interrogation practices.

As a longtime member of the committee, I strongly support today's release of the declassified Executive Summary, Findings, Conclusions and Additional and Minority Views of the committee's report. With the release of this report, the American people finally have the information they need to understand the CIA's interrogation practices that spanned 2001 through 2009, when President Obama put an end to the Bush-era program.

The CIA's practices went against our values as Americans and damaged America's global reputation. The committee's report shows not only that torture did not extract the "otherwise unavailable" intelligence that some CIA officials claimed, it did not work as a policy or in practice.

I have consistently opposed the repugnance, legality and efficacy of torture. I supported FBI Director Robert Mueller's directive saying FBI agents may not participate in torture. I have repeatedly and publicly expressed my frustration about being lied to and ma-

nipulated by some CIA officials over many years. As I said during the Intelligence Committee's hearing confirming John Brennan as CIA Director, "I'm going to be blunt and this will be no surprise to you, sir—but I've been on this Committee for more than 10 years, and with the exception of Mr. Panetta, I feel I've been jerked around by every CIA Director."

My views against torture have been consistent with those of Senator JOHN MCCAIN, whose stance against torture is particularly compelling given his own experiences as a prisoner of war. I have also supported the use of interrogation techniques as laid out in the Army Field Manual and have decried the use of contractors by the CIA in the torture of detainees.

Some people have raised concerns about the timing of the release of this report and that our enemies could use it as a pretext for violence. Long before the release of this report, however, terrorist groups made their violent intentions towards America clear. They hate America and our freedoms. They use violence for the sake of violence. No public action is without risks, whether by President or Congress, but we also risk who we are as Americans by suppressing the facts in this report.

I would like to reiterate that this report was reviewed and redacted in conjunction with the CIA and White House, and the Director of National Intelligence approved its declassification. It was a difficult process that took over a year, but we finally got to a place where the narrative of the report was adequately preserved while ensuring that CIA personnel and operations were not compromised. The DNI weighed the risks and ultimately certified the declassification of the report.

To be clear, my support for this report in no way diminishes my respect for the men and women of the CIA, who are faithfully and legally doing their duties. The CIA's intelligence professionals put their lives at risk for our country. They deserve our support and respect.

I would like to thank Select Committee on Intelligence Chairman DIANNE FEINSTEIN for her leadership, as well as my committee colleagues from both sides of the aisle who supported this investigation. Throughout the frustrating and sometimes contentious process of producing this report, we never gave up on pursuing the truth. Thanks also to the committee staff who worked tirelessly on this report at great sacrifice to themselves and their families.

This report sheds light on a complicated episode in America's history, but it is also a testament to the value of never giving up on the search for truth and accountability. I hope that future generations will read it, study it, learn from it and make sure that torture is never again used by the U.S. government.