said, one, ''It's not my job.'' We have heard that. And, two, ''Don't worry about it; only two or three are going to be lost.''

Well, I would simply say to my good friends at the Homeland Security Department, come to Houston, Texas, and weave your way through neighborhoods that are at the high economic level and low, and you will find that it would result in a terrible, horrific tragedy, Mr. Speaker, if there was a rail catastrophe.

I ask my colleagues to support the motion to instruct to provide real rail security.

I rise in strong support of the Motion to Instruct Conferees to accept the Senate amendments to H.R. 5494 the "SAFE Port Act." I particularly wish to thank the gentleman from Mississippi, Mr. THOMPSON, the Ranking Member of the Homeland Security Committee, for introducing this important and much needed motion.

The SAFE Port Act, H.R. 4954, was reported out by the Homeland Security Committee and passed by the House in May of this year. On balance, the SAFE Port Act is a good bill but it only addresses port and shipping container security. The Senate bill contains similar port security provisions, but also includes several provisions which will have the salutary effect of substantially enhancing the safety and security of America's rail, subway, buses and trucking systems. The Senate bill also strengthens aviation security, border security, and creates a National Warning and Alert System which provides first responders with post-disaster health monitoring.

Mr. Speaker, the House Republican Leadership has had many opportunities to address these security issues, but it has failed to do so. The time for action has long since passed. We need a new direction. We need a new approach. It is time for action and a new approach. The Senate bill is a bipartisan step in the right direction. We should take advantage of this opportunity to strengthen security and assist first responders. The final Conference Report should reflect the Senate's positions on rail, mass transit, and border security; and warning and alert systems.

Mr. Speaker, unlike the House, the Senate approved an amendment that would authorize $3.5 billion for mass transit security grant programs and $1.2 billion for freight and passenger rail security. This is reason alone to instruct the Conferees to accede to the Senate position on mass transit and rail security.

America's rail and mass transit systems remain vulnerable on the watch of the House Republican leadership. We need a new direction. Consider the following: Worldwide Terrorist Attacks on Trains Average 30 Per Year; The 9/11 Commission Noted That Rail and Mass Transit Are Particularly Vulnerable; International Brotherhood of Teamsters (IBT) Found a Lack of Security Along Railroad Tracks and in Rail Yards Across the County; Mass Transit Becomes More Vulnerable to Terrorist Attack as Airline Security Improves.

RAIL SECURITY IN THE SENATE BILL

The Senate bill also advances the ball on meaningful rail security by requiring the Departments of Homeland Security and Transportation to conduct vulnerability assessments for freight and passenger rail systems. The bill authorizes $5 million in FY 2007 to carry out this requirement.

Without any requirements that these agencies conduct comprehensive reviews of rail security, how can we move in a meaningful direction to protecting America's rail systems?

This bill also authorizes for fiscal years 2007–2010 critical fire and life-safety improvements to Amtrak tunnels on the Northeast Corridor in New York City, New York ($470 million); Baltimore, Maryland ($47 million); and Washington, DC ($32 million). This money will be spent specifically on communication, lighting, and passenger egress upgrades. If a terrorist attack were to occur in these cities, it is vitally important that riders be able to successfully leave the tunnels—this could mean the difference between life and death.

The Senate bill authorizes $350 million for FY 2007 for security grants to freight railroad, Alaska Railroad, hazardous materials shippers and AMTRAK. This is badly needed funding and not just lip-service about rail security.

This bill also requires that hazardous material shippers create and implement threat mitigation plans to be reviewed by the Departments of Homeland Security and Transportation.

Research and development is also important component in making sure that our rail systems are secure. This bill authorizes $50 million in fiscal years 2007 and 2008. The money will be used to test new emergency response techniques and technologies; develop improved freight technologies; and test wayside detectors.

Rail employees are the vital eyes and ears of the system. They will be the first ones to know if there is a problem. However, they must be protected. The Senate bill provides them with whistleblower protections in order to ensure that they won't be penalized for reporting problems.

These are just some of the reasons I support the Motion to Instruct Conferees to accede to the Senate position on the SAFE Port Act, H.R. 5494. I urge my colleagues to join me. I yield back the remainder of my time. Thank you.

Mr. KING of New York. Mr. Speaker, I yield myself such time as I may consume to close on our side very briefly.

Mr. Speaker, I strongly oppose the motion to instruct. I strongly support the underlying bill.

The bottom line is we are in full agreement on a port security bill and that is what this is all about. It is a port security bill which would provide $400 million in port security grants. It sets up a risk-based formula for those grants. It establishes a domestic nuclear detection office. It sets up three pilot projects overseas with 100 percent scanning. It is a bipartisan bill. The underlying bill passed this House by a vote of 421–2.

We have carried it this far. Let us not let the perfect be the enemy of the good. I respect the gentleman. I respect his motion. But at this stage I say let us go on to the conference. Let us do what has to be done. Let us put an end to the entire crisis which resulted out of the Dubai Ports issue. Let us show the American people we can get the job done. Let us finish it. Let us go to conference.

With that I urge defeat of the motion.

Mr. Speaker, I yield back the balance of my time.

Mr. THOMPSON of Mississippi. Mr. Speaker, I yield myself such time as I may consume.

This motion to recommit with instructions is clearly intended to make the bill better. We clearly have rail and safety issues still outstanding. What I have tried to prepare for Congress is an opportunity to get it right. Piecemealing is not the way to go. We absolutely can fix it right here, right now with this motion to instruct. If we do it, we can all go home feeling that America will be safer. If we don't, we leave substantial work yet to be done.

Mr. Speaker, I yield back the balance of my time.

The SPEAKER pro tempore. Without objection, the previous question is ordered on the motion to instruct.

There was no objection.

The SPEAKER pro tempore. The question is on the motion to instruct offered by the gentleman from Mississippi (Mr. THOMPSON).

The question was taken; and the Speaker pro tempore announced that the noes appeared to have it.

Mr. THOMPSON of Mississippi. Mr. Speaker, on that I demand the yeas and nays.

The yeas and nays were ordered.

The SPEAKER pro tempore. Pursuant to clause 8 of rule XX, further proceedings on this question will be postponed.

PROVIDING FOR CONSIDERATION OF H.R. 5825, ELECTRONIC SURVEILLANCE MODERNIZATION ACT

Mr. PUTNAM. Mr. Speaker, by direction of the Committee on Rules, I call up House Resolution 1052 and ask for its immediate consideration.

The Clerk read the resolution, as follows:

H. RES. 1052

Resolved, That upon the adoption of this resolution it shall be in order without intervention of any point of order to consider in the House the bill (H.R. 5825) to update the Foreign Intelligence Surveillance Act of 1978. In lieu of the amendments recommended by the Committee on the Judiciary and the Permanent Select Committee on Intelligence now printed in the bill, the amendment in the nature of a substitute printed in the report of the Committee on Rules accompanying this resolution shall be considered as adopted. The bill, as amended, shall be considered as read. The previous question shall be considered as ordered on the bill, as amended, to final passage without intervening motion except: (1) 90 minutes of debate, with 60 minutes equally divided and controlled by the chairman and ranking minority member of the Committee on the Judiciary and 30 minutes equally divided and controlled by the chairman and ranking minority member of the Permanent Select Committee on Intelligence; and (2) one motion to recommit with or without instructions.

SEC. 2. During consideration of H.R. 5825 pursuant to this resolution, notwithstanding the operation of the previous question, the Chair may postpone further consideration of the bill to a time designated by the Speaker.

The SPEAKER pro tempore. The gentleman from Florida (Mr. PUTNAM) is recognized for 1 hour.

Mr. PUTNAM. Mr. Speaker, for the purpose of debate only, I yield the customary 30 minutes to the gentleman from Florida (Mr. HASTINGS), pending which I yield myself such time as I may consume. During consideration of this resolution, all time yielded is for the purpose of debate only.

(Mr. PUTNAM asked and was given permission to revise and extend his remarks.)

Mr. PUTNAM. Mr. Speaker, I am pleased to bring to this floor House Resolution 1052. The resolution is a rule that provides for consideration of H.R. 5825, the Electronic Surveillance Modernization Act. H.R. 5825 relates to the manner in which the Federal Government collects oral, wire, and electronic communications for foreign intelligence purposes.

In order to safeguard fourth amendment protections, Congress has created procedures to allow limited law enforcement access to private communications and communication records. Specifically, Congress enacted title III of the Omnibus Crime Control and Safe Streets Act of 1968 that outlines what is and what is not permissible with regard to wiretapping and electronic eavesdropping.

Title III of the Crime Control Act authorizes the use of electronic surveillance for specific crimes. While Congress did not cover national security cases in the Crime Control Act, it did include a disclaimer that the wiretap laws did not affect the President's constitutional duty to protect our national security.

In 1972, the U.S. Supreme Court specifically invited Congress to establish similar standards for domestic intelligence that were established for criminal investigations.

Congress enacted the Foreign Intelligence Surveillance Act of 1978, FISA, to prescribe procedures for foreign intelligence that is collected domestically. FISA authorized the Federal Government to collect intelligence within the United States on foreign powers and agents of foreign powers. It established a special court to review and authorize or deny wiretapping and other forms of electronic eavesdropping for purposes of foreign intelligence gathering in domestic surveillance cases. FISA was enacted by Congress to secure the integrity of the fourth amendment, while protecting the national security interests of the United States by providing a mechanism for the domestic collection of foreign intelligence information.

Mr. Speaker, the purpose of the Electronic Surveillance Modernization Act is to modernize the Foreign Intelligence Surveillance Act to strengthen oversight of the executive branch concerning electronic surveillance and intelligence and to provide clear electronic surveillance authority to the national intelligence agencies in the event of a terrorist attack, armed attack, or imminent threat against this Nation.

FISA was originally constructed in 1978, more than 25 years ago. Changes in technology have caused an unintentional shift in the focus and reach of FISA. The complexity, variety, and means of communications technology has since mushroomed exponentially, while the world has become more interconnected. Think of the revolution in communications technology that has occurred in the past 25 years. The cellular technology, wireless technology, the development and explosion of Internet access, all communications tools, all technologies that allow those who would plot terrorist acts against our people to use and access in a readily available form.

We now have terrorists in remote camps who can easily communicate globally with cells around the world and within this country through the use of wireless technology and satellites. Think of the images from Afghanistan of broadcasts through wireless laptop devices using satellite technology from a cave.

The structure of our surveillance laws has remained confined to the technology of a generation-old copper wire telephone, while the terrorists are utilizing every technology and communication device at their disposal.

The House Permanent Select Committee on Intelligence received testimony that the current provisions of FISA are ''dangerously obsolete.'' H.R. 5825 modernizes the law in a number of critical respects. It updates FISA to make it technology neutral and neutral as to the means of communication. Provisions now apply to a land line phone as well as cellular and wireless modes of communication.

This legislation streamlines the surveillance approval process to keep the focus on gaining knowledge of those who would do harm to the United States while protecting the civil liberties of average Americans. It gives our intelligence personnel the necessary tools to help detect and prevent acts of terrorism and to respond to terrorist attacks.

As reported, the bill also ensures that adequate authority exists to conduct necessary electronic surveillance when a threat of imminent attack exists. The Electronic Surveillance Modernization Act also enhances congressional and judicial oversight of U.S. Government electronic surveillance activities to ensure that activities conducted under both FISA and the authorities in this bill will be utilized by the President only, only, with the knowledge and coordination of the other branches of government.

More broadly than just FISA, the bill also addresses the fundamental separation of powers concerns expressed by Members through amendments to the National Security Act by providing express authority for the chairman of the congressional Intelligence Committees to broaden their reporting on sensitive issues to additional members of the committee at his or her discretion on a bipartisan basis in necessary circumstances.

H.R. 5825 enhances the overall authorities of our Nation to act as a whole to protect itself in times of war and heightened threat of attack, both terrorist and otherwise.

□ 1745

I am pleased with the efforts of the House Permanent Select Committee on Intelligence and the House Judiciary Committee. This bill is an excellent example of how Congress and the executive branch can work together to ensure our national security. I thank Chairman HOEKSTRA and Chairman SENSENBRENNER and all the members of the committees for their work. I urge Members to support the rule and the underlying bill.

Mr. Speaker, I reserve the balance of my time.

Mr. HASTINGS of Florida. Mr. Speaker, I thank the gentleman, my friend from Florida, for the time; and I yield myself such time as I may consume.

Mr. Speaker, I rise in strong option to this closed rule and the underlying legislation. First, let me say that I really am pleased that Congress belatedly sees a need to address the President's unconscionable, declared by court, unconstitutional domestic spying program.

Unfortunately, we are considering a bill today that was primarily drafted by the White House. I do not relish the notion of criticizing this bill; but because what it does to the Constitution, however, and I am sworn to uphold, as are all of the Members of this body, to uphold and defend that Constitution, I am not going to sit idly by and watch people trample on it.

Now, I have lived and seen how unchecked power in the hands of bureaucrats can be used to squelch legitimate first amendment exercises. We have seen monitoring of students, preachers and housewives.

I have seen what happens when government protectors think they answer to no one. And, frankly, it is not pretty. I just implore you all to think back to the 1970s,and Americans were shocked to learn about President Nixon's unchecked spying for political advantage.

Americans were similarly dismayed over the legendary J. Edgar Hoover's listening in not only on Dr. King, but many other targets. Those illegal surveillance scandals were, in part, what led to the creation of the select committees of intelligence.

It is our job, Congress's job, to ensure that we effectively oversee the activities of the NSA, the FBI, and the CIA. To the point. This White House bill really does scare me. We would be giving not just President Bush's administration, but every subsequent administration a blank check.

This bill does so much to chip away at the civil liberties and privacy protections built into the Foreign Intelligence Surveillance Act, you will hear it referred to often as FISA, that it could, if passed, have very disastrous effects.

It redefines the definition of surveillance in an irresponsible way. The effect is that the NSA, the FBI, would be able to listen to any call or read any e-mail that comes into or goes out of the United States. So if a soldier overseas calls her husband, NSA can listen in. If a little girl in my home town of Mirimar, Florida, sends an e-mail to her grandmother in Israel, NSA can read it.

If a student at Florida Atlantic University is studying in France and calls her father at home in Ft. Lauderdale, NSA can listen in. Now, that soldier putting her life on the line in Iraq is not a terrorist. The little girl in Mirimar and her grandmother I think we can all assume are not plotting to overthrow anything.

The student at Florida Atlantic and her father I am just guessing have likely not sworn their lives to overthrowing the United States Government.

At the risk of being trite, the White House-drafted bill has more holes than Swiss cheese. Maybe we ought to just call it the Swiss cheese bill. It throws out some pretty broad terms and never defines them.

What is an armed attack? What is an imminent threat or imminent attack? They are not defined in this bill. Yet, the President has broad authority under this bill to do whatever he pleases under these conditions. Footnote right there. Let's make this very clear, not just this administration but succeeding administrations would have this power.

Arguably under this bill, every single day since September 11, 2001, we have been under the imminent threat of a terrorist attack. And if the mover of this bill and the White House get their way, every call and every e-mail, even domestic ones, would be subject to warrantless surveillance.

Allowing this President or any President to conduct warrantless electronic surveillance under these vaguely described circumstances is, simply put, dangerous. You never know how the next President might use or abuse her power when she gets it.

You know, Mr. Speaker, I am fond of quoting Ben Franklin, and so I am going to do it again today. The legendary Ben Franklin said: ''Those who would give up essential liberty to purchase a little temporary safety deserve neither liberty nor safety.''

This is what we might do today again. This piece of legislation may be one of the most important bills that the House will consider this year or any year, and not one Member of the House, not one, will be able to offer an amendment. That bothers me generally, Mr. Speaker. Today it bothers me specifically.

There was an amendment rejected at the Rules Committee offered by our colleagues, Mr. SCHIFF and Mr. FLAKE, that was similar to an amendment that I offered at the Select Committee on Intelligence of the House of Representatives. My amendment simply would have made the Foreign Intelligence Surveillance Act more transparent to the people who depend on it most. It was legislation more or less drafted at their request to clear perceived ambiguity in the current law.

My language would have made it clear, even to the people in President Bush's administration, what constituted domestic spying and what was foreign-based. Yesterday, the distinguished chairman of the Rules Committee, my friend, DAVID DREIER, when he did not permit amendments on this floor said: ''Well, Democrats did not have a substitute.''

Well, today, we have one. And what is your excuse now, Mr. Chairman? Not to worry, it is a rhetorical question. The answer I well know is to squelch democracy here in the United States House of Representatives.

You beat with rulemaking that which you know you cannot beat with reason. And what message does that send to those that would follow our lead, those we are trying to teach our Democracy Assistants Commission? I know what you say: do as we say, not as we do. For today, in the people's House, democracy is being eviscerated by those who recommend it to others.

I have said it before: the way the majority runs the House is shameful. It is hypocritical. It is un-American, and it is undemocratic, and it happens every single day that we have a closed rule, and in other circumstances as well.

Could it be any clearer that America needs a new direction? Stopping, thwarting the will of those of us in the House of Representatives who have a different point of view, or at least should have an opportunity to have discussed a different point of view and have the will of the body make the decision as to whether or not that point of view or the one offered by the majority ought prevail, should be what we should be about in democracy.

Obviously, Mr. Speaker, I urge my colleagues to oppose this closed rule and the White House legislation which brings it to the floor.

Mr. Speaker, I reserve the balance of my time.

Mr. PUTNAM. Mr. Speaker, I yield 2½ minutes to the gentlewoman from West Virginia (Mrs. CAPITO).

Mrs. CAPITO. Mr. Speaker, I would like to thank my colleague from the Rules Committee, and I would also like to thank the sponsor of this legislation, Mrs. WILSON, for her doggedness and her determination to do this right.

Mr. Speaker, I rise today in support of the rule and the underlying legislation, the Electronic Surveillance Modernization Act. We are at war against a sophisticated, worldwide terrorist adversary that uses all of the advantages modern day technology has to offer.

We know that these terrorists are continuing to plot attacks against the United States, our allies, and our interests around the world. In August, the coordination of the United States, British, and Pakistani intelligence helped British authorities apprehend terrorists plotting to blow up aircraft bound for the United States.

Against this backdrop, it is absolutely critical that our government have the ability to monitor electronic communications by terrorist organizations. We are talking about allowing the government to intercept communications of cold-blooded killers who seek to do our Nation harm, not grandchildren e-mailing their grandmother.

The FISA process should be used whenever possible, but we cannot hinder the ability of this President or future Presidents to monitor communications that could stop a terrorist attack. It is appropriate to allow the President to authorize electronic surveillance when there is an imminent threat of an attack against our country, when we have identified the responsible organization, and when we have reasonable belief that the person being targeted is communicating with a terrorist group.

We must do everything possible to prevent future terrorist attacks. Our enemies will not delay their plans to harm our citizens while we go to court to obtain a warrant. We have to be right 100 percent of the time.

The bill strengthens congressional oversight of the Terrorist Surveillance Program and requires FISA warrants in most cases, the exceptions being after an armed attack, after a terrorist attack, or when the threat is imminent.

The bill is reasonable. It protects the rights of our citizens; but, most importantly, it will preserve a critical authority that we must have to protect our homeland. We are at war and this is critical to our winning that war. I urge my colleagues to pass this rule and the underlying bill.

Mr. HASTINGS of Florida. Mr. Speaker, I yield 4¼ minutes to the gentleman from Massachusetts (Mr. MCGOVERN).

Mr. MCGOVERN. Mr. Speaker, I want to thank my friend from Florida for yielding me the time.

Mr. Speaker, yesterday we dealt with the issues of torture and military tribunals under a closed rule. No amendments allowed. Today we deal with the issue of domestic spying, also under a closed rule.

Never mind that there are profound constitutional issues at stake. This Republican leadership has decided it is more important to debate suspension bills than matters that could likely undermine the most sacred rights of our people.

This bill authorizes more warrantless surveillance of American citizens than Congress has ever authorized in American history. And if this rule passes, it will be debated on the House floor for an hour and a half.

The Founding Fathers must be spinning in their graves. Today, the Republican leadership found time on the floor to rename post offices and to congratulate Little League teams, but it cannot find the time to thoughtfully debate this far-reaching bill. This Congress has become a place where trivial issues get debated passionately and important ones not at all.

After hours of testimony in the Rules Committee this afternoon listening to both Republicans and Democrats, offering thoughtful amendments and substitutes, the Republican majority on the Rules Committee said ''no'' to every single one of them.

□ 1800

During the Rules Committee meeting, I asked the Republican authors of this bill whether or not they would be open to considering thoughtful amendments and substitutes. They said it was up to the Rules Committee, that they did not really have an opinion.

No opinion, Mr. Speaker? No opinion on whether Members who believe there should be judicial oversight on domestic spying should have the right to offer an amendment? No opinion on whether or not a bipartisan substitute should be made in order? No opinion? Give me a break.

Mr. Speaker, yesterday on the House floor, as the distinguished gentleman from Florida pointed out, the Chairman of the Rules Committee defended his decision to not allow Democrats to offer thoughtful amendments to the torture bill. He said that we should have offered a substitute instead.

So, today, Democrats and Republicans attempted to offer a full bipartisan substitute to this domestic spying bill, but the Rules Committee refused to make that in order, too. How do you defend that, Mr. Speaker? How do you look Members of your own party in the eye and say your ideas do not matter?

If the Republican leadership does not agree with the bipartisan substitute, then they should defeat it on the House floor after a full and open debate. Instead, they cower behind procedural tricks, parliamentary sleight of hand and closed rules. No wonder the American people are disgusted with Congress.

Let me speak for a moment to my friends on the other side of the aisle. No matter what our policy differences, I would like to think that we all think democracy is a good thing. I would like to think that we all want good legislation to come out of this House. I am sad to say that I am having a hard time thinking that anymore.

If my Republican friends want this trend of closed rules, of no amendments, of no democracy in the House to continue, then by all means vote for this rule. Just go along to get along.

But if you believe, as I do, that the monopoly on good ideas is not held by a few members of the leadership in a closed room, then vote ''no.'' Have the guts to vote ''no.''

Thoughtful Republican amendments are routinely shut out by the Rules Committee, including here on this bill. The only way to bring this trend to an end is to start defeating closed rules and to demand more openness in this House of Representatives. If you continue to reward bad behavior, then bad behavior is what you will continue to get.

Let us put a stop to this nonsense. Let us stop diminishing this House of Representatives. I urge my colleagues to vote ''no'' on this rule.

Mr. HASTINGS of Florida. Mr. Speaker, will the gentleman yield?

Mr. MCGOVERN. I yield to the gentleman from Florida.

Mr. HASTINGS of Florida. Mr. Speaker, when we were in the Rules Committee in those hours of debate, how fast after that discussion when these people presented themselves did the rule come to the floor? In short, was there any deliberation?

Mr. MCGOVERN. Less than a second. The deal was done early on in the day. I mean, the Members who came up and testified and presented their thoughtful amendments wasted their time because the leadership had decided to close this thing down earlier in the day, and that is unforgivable. This issue is too important.

Mr. PUTNAM. Mr. Speaker, I yield 3 minutes to the gentleman from Georgia (Mr. GINGREY), my colleague on the Rules Committee, to talk about the issue at hand, the Electronic Surveillance Modernization Act.

Mr. GINGREY. Mr. Speaker, I thank my colleague on the Rules Committee, Mr. PUTNAM, for yielding.

I rise today fully in support of this rule and the underlying legislation for H.R. 5825, the Electronic Surveillance Modernization Act of 2006, because I believe protecting innocent Americans from terrorist plots is one of our government's most critical duties.

This bill updates the FISA, Foreign Intelligence Surveillance Act of 1978, to authorize the expanded use of electronic surveillance on suspected terrorists, with mandated congressional oversight. Its immediate passage is absolutely essential to prevent future terrorist attacks against this Nation.

Mr. Speaker, much has changed since FISA was enacted in 1978. The war on terror has replaced the Cold War as our preeminent national security issue. There have been monumental advances in technology, and our terrorist adversaries are capitalizing on these changes in technology as they aggressively plot our destruction. If we are to be prepared for the foremost threat to our Nation's safety today, the 1978 bill must be amended for the realities of today and tomorrow.

Mr. Speaker, this bill would authorize the NSA Terrorist Surveillance Program to monitor the international, let me repeat, international communication of suspected terrorists inside the United States, while respecting our citizens' privacy.

Simply put, this bill streamlines the process by which a FISA warrant can be obtained. It gives NSA more time to conduct emergency surveillance on suspected terrorists without a warrant, and it allows the President to authorize warrantless electronic surveillance for up to 90 days of suspected terrorists when it is believed an attack on America is imminent.

While this bill helps us stop terrorists before they inflict destruction, it also protects the rights of law-abiding United States citizens by requiring our President to inform Congress and the FISA court of these emergency surveillances.

Mr. Speaker, authorizing the electronic surveillance of terrorists is a matter of common sense. By listening to the phone conversations of al Qaeda members and of organizations working in support of al Qaeda, we stand to learn much more about their terrorist activities, including likely targets of attack.

Mr. Speaker, I was tremendously disappointed that 160 of my Democratic colleagues voted yesterday against the Military Commissions Act, and I am still struggling to understand why. But I am hopeful that they will not vote today to limit our ability to monitor the terrorists' phone calls so that we can disrupt these devastating plots.

In any regard, my Republican colleagues and I remain committed to the safety of this Nation. To ensure that we give our government the tools it needs to fight and win the war on terror, I urge support for this rule on both sides of the aisle and the underlying legislation.

Mr. HASTINGS of Florida. Mr. Speaker, I am very pleased to yield 2 minutes to the distinguished gentlewoman from Texas (Ms. JACKSON-LEE), my good friend.

(Ms. JACKSON-LEE of Texas asked and was given permission to revise and extend her remarks.)

Ms. JACKSON-LEE of Texas. Mr. Speaker, it is very sad to say that what we are doing today is simply a march toward the November election. There is a certain calculated plan as to what Republicans need to be able to do to win the House, and obviously it has to do with the security of America.

There is no divide among Democrats and Republicans about our resolve to secure this Nation. Not a one of us in this Congress if asked or if needed to defend this Nation in the immediacy of time would refuse that request.

The reason why there is such a sharp divide is because this is not a serious attempt to secure America. It is, frankly, a serious attempt to eliminate for the American people rights that are a part of their birthright.

This is a closed rule, and I oppose it because security and civil liberties of those who are citizens of the United States can be intertwined, and you can secure the Nation with rights protected, therefore there should have been open rule.

I would have offered an amendment that would have improved the bill immeasurably by striking the golden mean between providing the President the emergency tools needed to respond to an act of war against our country, while at the same time protecting all Americans from the dangerous secret exercise of unchecked and unreviewable power to surveil and search any person deemed by the President to pose a threat to the country. This would have provided the President the authority to conduct surveillance and searches without a warrant for 15 days following either a declaration of war or an authorization for the use of military force.

In addition, it is very clear that the FISA provisions now allow for the President to act without judicial authority. Authority can be given after the fact, and the evidence that is given to the court can be and is secret.

It is worthwhile saying that this, again, is not a question of can we resolve this and give this bill. It is a rush to judgment to ensure that this would be a good political sound bite for Republicans who are running for re-election. This is a bad way to secure America, and I ask my colleagues to oppose this rule because the American people frankly, are not prepared to give up their civil liberties when we can do both—civil liberties and a secure Nation.

I rise in opposition to this closed rule providing for consideration of H.R. 5825, the Electronic Surveillance Modernization Act. I oppose the rule because it forecloses members from offering constructive amendments that would improve a bill that otherwise will represent an unwarranted and dangerous delegation of authority to the executive branch. Specifically, the bill does not impose limits on the President's powers; it remains silent on the NSA's warrantless surveillance and expands the government's powers under the Foreign Intelligence Surveillance Act to collect information on Americans without judicial review.

This sad state of affairs could have been avoided if the Rules Committee had fashioned an open rule, allowing consideration of amendments of the type I and my colleagues offered during the Judiciary Committee markup.

For example, I offered an amendment that would have provided the President authority to conduct surveillance and searches without a warrant for 15 days following either: (1) a declaration of war; or (2) "an authorization for the use of military force" (AUMF) within the meaning of Section 2(c)(2) of the War Powers Act.

This amendment improves the bill immeasurably by striking the golden mean between providing the President the emergency tools needed to respond to an act of war against our country, while at the same time protecting all Americans from the danger of secret exercise of unchecked and unreviewable power to surveil and search any person deemed by the President to pose a threat to the country.

Mr. Speaker, it is worth remembering that while armies fight battles, it is a nation that goes to war. And the Constitution is neither silent nor coy as to where the power to take a nation to war rests: it is vested in the Congress of the United States, not the President.

The power to conduct secret, warrantless surveillance and searches in response to an act of war or a terrorist attack fundamentally is a war power. That is why the acquisition and exercise of that power properly must flow from a congressional declaration of war or authorization to use military force in response to an act of war.

I believe we should have an open rule to permit such an amendment because it keeps faith with the Founding Fathers and honors the Constitution that every member of Congress, and each of our brave troops who risk their lives to keep us free, take an oath to uphold.

Mr. Speaker, H.R. 5825 goes dangerously far afield by authorizing the President to conduct warrantless surveillance and searches for 90 days after "an armed attack against the territory of the United States," or a "terrorist attack against the United States." Moreover, this new surveillance power would extend to U.S. soil, regardless of any nexus to the actual event that triggered the exercise of emergency surveillance authority.

Mr. Speaker, the phrases "armed attack against the territory of the United States" and "terrorist attack against the United States" are so broad that they can be triggered by nearly any act of violence directed against the interests of the United States, including:

The recent bombing of the U.S. embassy in Syria. If H.R. 5825 were in effect today, we could have a warrant-free environment in the United States right now.

An attack on U.S. armed forces abroad, including any attack on soldiers in Iraq or Afghanistan, which according to press reports, is a daily occurrence.

Mr. Speaker, we do not need to surrender the liberties of the American people in order to protect the security of the American people. As the Framers understood so well when they devised our magnificent Constitution, we can have both liberty and security. All we need is wisdom and good counsel, what the Greeks called "euboule". That is what is lacking in this rule and with respect to H.R. 5825, the Electronic Surveillance Modernization Act.

Another amendment that could have been offered if we had an open rule is an amendment that reiterates that FISA is the exclusive procedure and authority for wiretapping Americans to gather foreign intelligence.

In the absence of the reaffirmation of this critically important principle, H.R. 5825 would have the unacceptable consequence of rewarding the President's refusal to follow FISA by exempting him from following these procedures. The effect of this would be to allow any president to make up his own "rules" for wiretapping Americans and secretly implementing those rules unless and until a court finds such rules unconstitutional. This would make tangible President Nixon's 1977 claim to David Frost that "when the president does it that means that it is not illegal." By flirting with the misguided and dangerous idea of inherent presidential power to wiretap, H.R. 5825 would resurrect the very provision in the criminal code that President Nixon relied upon in his warrantless wiretaps of countless Americans based on their political views.

The legislative history of FISA provides an important rebuttal to the Administration's claims regarding inherent authority to ignore federal law: "[E]ven if the president has the inherent authority in the absence of legislation to authorize warrantless electronic surveillance for foreign intelligence purposes, Congress has the power to regulate the conduct of such surveillance by legislating a reasonable procedure, which then becomes the exclusive means by which such surveillance may be conducted." H.R. Rep. No. 95–1283, pt. 1, at 24 (1978).

By eliminating the exclusivity of these procedures, Congress would be acquiescing in the destruction of one of the pillars of FISA that has helped to protect the civil liberties of hundreds of millions of Americans from unilateral spying by the executive branch. To paraphrase the Supreme Court, our Fourth Amendment freedoms cannot properly be guaranteed if electronic surveillance may be conducted solely within the discretion of the president. See United States v. United States District Court, 407 U.S. 297 (1972).

Without such language, H.R. 5825 would undo the Congress' manifest intent in passing FISA, which "was designed . . . to curb the practice by which the Executive Branch may conduct warrantless electronic surveillance on its own unilateral determination that national security justifies it." (See S. Rep. No. 95–604(1), at 7, 1978 U.S.C.C.A.N. 3904, 3908). By eliminating the requirement that the president follow FISA and get a court order to search based on evidence an American is conspiring with a foreign agent, H.R. 5825 would places our rights at the secret will of the president—any president.

Mr. Speaker, it is more than a truism that real security for the American people comes not from deferring to the President but from preserving the separation of powers and adhering to the rule of law.

I therefore cannot support this closed rule and urge my colleagues to vote against the rule. We have time to come up with a better product and we should. The American people deserve no less.

Mr. PUTNAM. Mr. Speaker, I am pleased to yield 3 minutes to the gentlewoman from New Mexico (Mrs. WILSON), the sponsor of the underlying legislation.

Mrs. WILSON of New Mexico. Mr. Speaker, I would like to start out first by correcting a few misstatements and giving a few facts.

The first is that somehow anything less than a warrant on an international phone call erodes civil liberties that we have enjoyed 219 years and does some violation to the Constitution.

The truth is that limitations on gathering foreign intelligence in the United States is relatively recent. It was the FISA law passed in 1978 that really set out the first limitations on the gathering of foreign intelligence within the United States.

In World War II, all international communications were subject to listening. In World War I, the government not only listened to international calls but opened the mail. Shortly after the invention of the telegraph during the Civil War we were intercepting communications.

The constitutional test is reasonableness, and this bill is reasonable. I thank my colleague from Florida for

bringing forward this rule today, but I think it is important to understand why we are here.

We are trying to modernize the Electronic Surveillance Acts of this country so that we allow our intelligence agencies to collect the intelligence to keep us safe, while also putting in place rules of the road to protect American civil liberties. The provisions that we have put in the Act are completely reasonable and pretty commonsense because we are in a different situation.

Intelligence is the first line of defense in this war on terror, and all of us 5 or 6 weeks ago now woke up to the news that in the U.K. they had arrested 16 people who intended to walk onto American Airlines airplanes at Heathrow Airport and blow them up over the Atlantic Ocean.

Our intelligence agencies have to be faster than the terrorists who are trying to kill us. This bill will give them the authority and the rules and the tools they need to intercept international communications between a known terrorist and someone in the United States of America, at the same time requiring notification to different branches of government, putting time limitations in place so that we protect the civil liberties of Americans.

We need to update our laws so that we protect the civil liberties of Americans and we keep Americans safe. The test is reasonableness, and I believe that the underlying bill passes the test.

Mr. HASTINGS of Florida. Mr. Speaker, I am very pleased to yield 5½ minutes to the distinguished gentleman from California (Mr. SCHIFF), my friend, who offered an amendment that I offered in the Select Committee on Intelligence.

Mr. SCHIFF. Mr. Speaker, I thank the gentleman for yielding.

This afternoon, we had a lengthy debate in the Rules Committee on the base bill offered by my colleague from New Mexico and a substitute amendment that was offered by Mr. FLAKE of Arizona and by myself. It was a lengthy debate. I think it was a good debate. It would have been a better debate, however, if the conclusion had not been predetermined, if, in fact, it was a real debate in the sense that the outcome had not been decided before we entered the room.

The gentleman asked how long did it take for the committee to decide not to allow the bipartisan alternative, and I can tell the gentleman, by the time it took me to walk from the Rules Committee across the street to my office, the committee had decided it would not allow a bipartisan alternative. But I suppose that was my own fault for walking too fast. Perhaps if I had walked slower across the street, I might have gotten to my office before the committee ruled.

So I am going to tell you today about the bill we will not have the opportunity to vote on, not in an up-or-down fashion, and I think I will tell you a little bit about why we will not have the opportunity to vote on this bipartisan bill.

The ''why'' I think is relatively straightforward. Because the majority does not have the confidence that it has the votes to allow the substitute to come before this House. Because the substitute, which was the product of about 6 months of work between Mr. FLAKE and myself and in its other forum, legislative forum, has the support of seven Republicans and seven Democrats, as bipartisan as you can make it in this House, very well might command the majority of this House. That runs afoul of the rule of the Speaker that unless it enjoys a majority of the majority you do not get a vote in this House of Representatives. So we will not have a vote on the bipartisan alternative.

But let me tell you and the rest of the country what we are being denied the chance to vote on in the substitute. The Schiff-Flake substitute would do the following:

It would extend the warrantless electronic surveillance authority from the current 72 hours after the fact to 7 days, because the Justice Department and the NSA said that they needed more time after a wiretap is initiated to go to court and get an authorization. It is important for people to recognize that under current law you do not need to get a warrant before you go up on a wiretap. Under FISA, you have 72 hours. The government said that is not enough, we want 7 days; and in our substitute, we give them 7 days.

We enhance the surveillance authority after an attack. The Justice Department and the NSA say, well, under current law, we have 15 days to do warrantless surveillance after the declaration of war. Well, we do not even declare war, and so our substitute provides that when we authorize the use of force and we make it explicit that we will permit warrantless surveillance for 15 days. That authorization to use force grants that surveillance authority after an attack.

□ 1815

We also address the main issue that was raised by the NSA in the public hearings, the main problem the NSA advocated needed to be addressed, and that is that when one foreigner is talking with another foreigner on foreign soil, but because of the changes in telecommunications since the passage of FISA more than a quarter century ago, and that communication touches down somewhere in the United States or is intercepted in the United States, FISA shouldn't be involved. You should not have to go to court when you want to intercept a communication between one foreigner and another foreigner on foreign soil. And so we fixed that problem.

Our substitute permits continued surveillance when targets travel internationally. That was another request made by Justice and NSA. We streamline the FISA application process and remove redundant requirements in the application process. We increase the speed and the agility of the FISA process. We authorize additional resources to hire more personnel to make the applications.

But we also do something very important, which the base bill doesn't do, and that is we reiterate the fact that when you are going to surveil an American on American soil, and that is after all the heart of this matter, when you are going to surveil an American on American soil, the court should be involved, if not before you go and surveil, then within 7 days, that FISA sets up the exclusive authority for that.

Now, my colleague from New Mexico says the constitutional standard is reasonable in this, and that is right. Americans under the fourth amendment have the right to be secure from unreasonable searches and seizures. We have the right to be protected in our reasonable expectation of privacy. So I ask you, What is your reasonable expectation of privacy, Americans? Is it that if you are not engaged in terrorism, if you are not in contact with terrorists, if you are not engaged in harmful activity that you should be secure in knowing that your phone conversations will not be tapped without someone going to court to prove the facts?

But Members of this body will not have a chance to vote on this bipartisan substitute because the majority doesn't have the confidence they can defeat it. And for that reason, I urge a ''no'' vote on this rule.

Mr. PUTNAM. Mr. Speaker, I am pleased to yield 4 minutes to one of the architects of this legislation, the gentleman from California (Mr. DANIEL E. LUNGREN).

Mr. DANIEL E. LUNGREN of California. Mr. Speaker, I thank the gentleman for yielding, and I note the gentleman from Florida's fondness for quoting Benjamin Franklin. It is interesting the debate we are engaged in today is not a new debate, because there has always been debate about the tension that has been developed or actually written into the Constitution among the three branches of government dealing with difficult issues like this.

And while the gentleman from Florida commended us to a conversation by the esteemed Founding Father Benjamin Franklin, I would give him another one. In 1776, Benjamin Franklin and the other four members of the Committee on Secret Correspondence explained their unanimous decision not to tell their colleagues in the Continental Congress about a sensitive U.S.-French covert operation by writing: ''We find, by fatal experience, that Congress consists of too many Members to keep secrets.''

There was a tension that they understood at that time, and there is a tension that naturally resides in this because of the unique character of the

President as Commander in Chief and his ability to ferret out foreign intelligence. So the question is how do we try and deal with that tension?

I would suggest to my colleagues that the fact that we have not had an attack since 2001 on U.S. soil is something for which we can all be thankful, but safer does not mean there is any room for complacency. As the events in Bali, Madrid, and London on 7–7 indicate, we are still at war with an enemy that is fully devoted to one thing: the murder of innocent people, specifically Americans, men, women, and children.

And in this effort to protect our citizens, the daunting task before us is to thwart the efforts of an enemy who operates underground by stealth and deception and at the same time not rip up our Constitution. This is made all the more difficult, in that, unlike traditional criminal cases, our success will be measured by the ability to prevent a future terrorist attack. This requires an ongoing assessment of how best to equip law enforcement and the intelligence community with the tools to respond to an enemy who is constantly morphing.

In meeting this challenge, intelligence is the necessary bridge to successful homeland security protection. The Foreign Intelligence Surveillance Act is, therefore, an essential and critical tool in our efforts to protect the American people. But one aspect of this challenge requires us to try and ensure that any gaps between the state of law and technology are closed to prevent their exploitation by a lethal enemy. In this regard, this bill before us, H.R. 5825, seeks a technology-neutral approach, which places greater emphasis on the nature of those surveilled and their location.

For example, an international call by a non-U.S. citizen to a terrorist organization would be treated the same under the law regardless of whether the non-U.S. person uses wire or radio technology. When FISA was enacted, domestic communications were transmitted via wire, while international communications were transmitted via radio. In recent years, international communications are increasingly transmitted through undersea cables, which are considered wire. This bill recognizes that international communications should be treated the same regardless of the specific technology at issue.

At the same time, this bill enables us to focus on protecting the reasonable privacy expectation of U.S. persons. Those with legitimate concerns over the scope of electronic surveillance should join us in supporting this legislation and supporting this rule to allow consideration of the legislation. In fact, the bill provides greater clarity in circumscribing the permissible limits of such surveillance.

Remember what the 9/11 Commission said: ''The choice between security and liberty is a false choice. As nothing is more likely to endanger America's liberties than the success of a terrorist attack at home.'' Support this rule and support this bill.

Mr. HASTINGS of Florida. My good friend, the distinguished gentleman from California, has cited again Franklin and those three other persons. But I would remind him that they did not yield all of their power to the President. They did consider that separation of power.

And Mrs. WILSON stated a minute ago that this bill puts in place rules of the road. The problem is that the rules are optional and the President gets to ignore them essentially whenever.

Mr. Speaker, I am very pleased at this time to yield 1 minute to my good friend, the distinguished gentleman from Ohio (Mr. KUCINICH).

Mr. KUCINICH. I thank the gentleman.

It is good to cite Ben Franklin. Maybe we should also be citing Phineas T. Barnum, because there is a section in this bill, section 10, entitled ''Compliance with Court Orders and Antiterrorist Programs.'' That actually amounts to a get-out-of-jail-free card for someone who may have leaked classified information.

Now, Gerald Ford gave Richard Nixon a pardon. I am wondering to whom this bill is giving a pardon. Does it give immunity or impunity for certain crimes and misdemeanors? This bill may actually be about someone's legal problems.

We need to look at this. We need to find out if someone leaked classified information and this bill is going to give them a get-out-of-jail-free card. Read the bill. Take a look at section 10. I want the sponsor to tell me that no one is going to get out of jail free who may have leaked classified information, and no one is going to escape prosecution for certain crimes and misdemeanors once this bill passes.

I want them to tell that to the Congress. Tell us you are not slipping in a clause here where you are trying to get somebody out of jail. Tell me that. Tell us that.

Mr. PUTNAM. Mr. Speaker, I continue to reserve the balance of my time.

Mr. HASTINGS of Florida. Mr. Speaker, I yield 1 minute to my good friend, the distinguished gentlewoman from California (Ms. LEE).

Ms. LEE. I want to thank the gentleman for yielding and for his leadership.

Mr. Speaker, I rise in total opposition to the rule for H.R. 5825, the Electronic Surveillance Act, and the underlying bill.

The FISA law the President chose to ignore, and that this bill seeks to bypass, is a law that powerfully symbolizes both the risk of the abuse of executive power and the strength of our system of checks and balances.

Now, the FISA law was enacted to protect against very real abuses in the name of fighting communism, if you remember. Not terrorism then, it was communism. Our executive branch, through the likes of J. Edgar Hoover and COINTELPRO perpetrated massive abuses and surveillance of innocent Americans. These abuses included the surveillance, among many others, of Dr. Martin Luther King, Jr. and his wife Coretta as part of what the Church Commission described as ''an intensive campaign by the Federal Bureau of Investigation to neutralize him as an effective civil rights leader.''

The only thing that redeems our Nation's great shame at these abuses was that the system of checks and balances created by our Constitution worked. Congress passed a law that allowed us to protect our Nation and our Constitution and our citizens.

Mr. PUTNAM. Mr. Speaker, I just rise to point out to the Members that we are here to modernize the FISA bill of 1978, and I ask Members to think about all of the changes in sophistication and accessibility of communication devices today.

Think about your own e-mail, your own BlackBerry, your own cell phone, your own laptop, your own desktop, just the handful of things that are directly involved in this line of work, in any routine business in America. All of those things offer multiple avenues per device to communicate around the world in an instantaneous manner at almost no cost.

Tracking that type of communication device, when it is being used by people who would fly airliners into the World Trade Center; when it is being used by people who would fly an airliner full of innocent women and children and students on field trips, and bands who have spent all year having car washes to be able to go on that trip into the center of our defense might, the symbol of our Armed Services, into the Pentagon; the kind of people who would plot to blow up 10 more airliners as recently as 5 weeks ago.

Now, it seems odd to me that that is a difficult choice, that we would want not to give all the tools possible to our law enforcement and intelligence officials. The plot that was broken up in London several weeks ago reflected two things to me: one, that we are still in grave danger; that the enemy is still, to this day, 5 years after 9/11, getting up every morning, going to bed late every night thinking of ways to destroy not just the United States, not just our allies, but those who share our values, Western Civilization in general: Madrid, Spain; London, England; the Danish, because of their free speech; and the United States are just some of the most blatant examples. We are still very much in danger. That is the first lesson of the disruption of that plot.

The second lesson of the disruption of that plot is that legislation that has passed in this country and in the U.K. in the 5 years since 9/11 worked, tearing down walls that separate discussions between intelligence gatherers and law enforcement. That legislation worked. Tracking financial transactions to be

able to follow money from Hamburg to Pakistan, back to London to the ticket agent where people are about to board an airplane that they intend to blow up worked. Tracking communications among terrorists works.

If a laptop is discovered in a cave in Afghanistan, and you look on their contacts list; if a cell phone is picked up in a desk drawer in a hotel in Islamabad and you look at who their frequently called numbers are, don't you think that says a lot about that person and who they are talking to? Certainly if you look at your own it says an awful lot about you, who your friends are, who your stockbroker is, what your wife's cell phone number is. Look at your own device. And we use that same common sense, that same investigative approach to the terrorists.

So when we look at the laptop or when we look at the cell phone in Islamabad or London or Hamburg or New York and there are numbers on there from a known al Qaeda operative to someone in the United States, we ought to be on that number as quickly as possible.

□ 1830

Anything else is an assault on common sense. We must move as quickly, as efficiently as possible, using every technology at our disposal to prevent terrorist attacks, to disrupt terrorist attacks, and to bring to justice the people who are planning them.

Mr. Speaker, I reserve the balance of my time.

Mr. HASTINGS of Florida. Mr. Speaker, I yield myself such time as I may consume.

Mr. Speaker, I have some suggestions about implementing every tool at our disposal. The 9/11 Commission would be one.

I would urge the gentleman not to lecture us regarding our commitment. We offered a measure to improve this measure. Everyone wants to catch the same people you are talking about catching. There is no problem in that regard.

Mr. Speaker, I am pleased to yield 3 minutes to the gentleman from Maryland (Mr. RUPPERSBERGER), my colleague on the Intelligence Committee.

Mr. RUPPERSBERGER. Just in response to the comments made by my friend from Florida, also, I agree with most of what you are saying. We need to protect our country. We need to be able to have the tools to go on the computer or to go on the cell phone or whatever we need. But we are a country of laws, and our forefathers created an excellent, excellent country and a Constitution, and that Constitution created checks and balances. That is about what we are talking about here today.

Now, I have an amendment that was before the Rules Committee today that was rejected. One of the administration's biggest arguments is that they need more time and flexibility to track down terrorists without going to a FISA judge. My amendment that was just rejected by the Rules Committee does that.

My amendment extends the duration of emergency authorizations from 7 to 14 days. That means the people who work at NSA have 14 days before they have to go to a FISA judge, but they do have to go to a FISA judge. So if it is the opinion of the administration that there is an emergency situation to protect our country, they can go on that phone to find that terrorist, but they would be able to have 14 days before they go to a FISA judge. But the issue is they have to go to a FISA judge, and that is the check and balance we do have in this country.

If we get information on an important target, we can conduct warrantless surveillance for 14 days before going to a FISA judge. That is giving the tools that we need. That amendment was rejected.

The purpose of my amendment was to make sure that in an emergency there was absolutely no chance that the men and women of the NSA would have to turn off their equipment just because they didn't have enough time to get a warrant.

As the Member who represents NSA, which is in my district, who sits on the Intelligence Committee and is one of the handful of Members briefed into the President's program, I would have hoped that my amendment would have been in order. My amendment was an attempt to do the right thing for the country and NSA.

We should remember that what makes our country great is our system of checks and balances. My amendment would have done that.

We should not have a closed rule on this bill. We should be willing to take whatever amendments are necessary to make the underlying bill the best one we can for the security of our country.

I urge my colleagues to vote ''no'' on the rule.

Mr. PUTNAM. Mr. Speaker, I reserve my time.

Mr. HASTINGS of Florida. Mr. Speaker, I am very pleased to yield 1½ minutes to my very good friend, the gentleman from Massachusetts (Mr. MARKEY).

Mr. MARKEY. Mr. Speaker, I thank the gentleman from Florida. I thank him for his great leadership.

Let us be clear. There is no question that our government must make every effort to uncover, disrupt and prevent terrorist attacks. The 9/11 strikes demonstrated the devastation that can result if we fail to detect terrorist plots.

The question is not whether our intelligence agencies should be allowed to conduct electronic surveillance of suspected terrorists. The answer is, of course, yes. The question before us is whether a court should review such surveillance so innocent American citizens are not spied upon as the government conducts surveillance operations.

The bill we are considering today fails to provide the vital civil liberty safeguards for American citizens that are the cornerstone of our democracy.

This bill is badly flawed. It expands the President's authority to secretly wiretap U.S. citizens without going for a warrant to a court. Under current law, warrantless wiretapping is permitted in certain emergency situations. This bill more than doubles the amount of time that the President can conduct surveillance of U.S. citizens without a warrant.

This bill also increases the likelihood that innocent Americans will be caught up in government-run surveillance operations. That is because the bill reduces the amount of specific information the government must provide when seeking approval from the FISA court.

Mr. Speaker, the President wants to go on a fishing expedition, but he doesn't want to have to get a fishing license from a court that guarantees that he has not exceeded the Constitution of the United States.

Mr. Speaker, the bill before us today attempts to authorize an illegal Bush Administration program that a Federal judge has determined "blatantly disregards" the Bill of Rights.

The Bush Administration's secret domestic surveillance program uncovered last year not only ignored constitutional protections against unreasonable searches and seizures, but also failed to abide by laws enacted before and after the September 11th attacks that give government authorities the tools needed to tap terrorist communications and track down terrorists while protecting the civil liberties of American citizens.

Let us be clear: there is no question that our government must make every effort to uncover, disrupt and prevent terrorist attacks—the 9/11 strikes demonstrated the devastation that can result if we fail to detect terrorist plots.

The question is not whether our intelligence agencies should be allowed to conduct electronic surveillance of suspected terrorists. The answer is, "of course. Yes." The question before us is whether a court should review such surveillance so that innocent American citizens are not spied upon as the government conducts secret surveillance operations. The bill we are considering today fails to provide the vital civil liberties safeguards for American citizens that are the cornerstone of our democracy.

This bill is badly flawed.

It expands the President's authority to secretly wiretap U.S. citizens without a warrant from the FISA court. Under current law, the government can conduct warrantless surveillance for up to a year of any "agent of a foreign power"—such as a foreign official or spy in the United States. But current law places a restriction on this authority—no communications of U.S. citizens or residents must be likely to be intercepted in the process. The bill before us today removes this important protection. That means that the phone calls and e-mail communications of any U.S. citizen could be intercepted while the government conducts warrantless surveillance of foreign agents.

Under current law, warrantless wiretapping is permitted in certain emergency situations. This bill more than doubles the amount of time that the Bush Administration can conduct surveillance of U.S. citizens without a warrant—

from the current three days to up to seven days.

This bill also increases the likelihood that innocent Americans will be caught up in government-run surveillance operations. That's because the bill reduces the amount of specific information the government must provide when seeking approval from the FISA court, such as details on the type of information the government is looking for and the procedures in place to prevent information from U.S. citizens from being collected in the surveillance operation.

Congress should be holding the Bush Administration accountable for illegally eavesdropping on thousands of U.S. citizens. Instead, the House is considering a bill that would expand the power of the Bush Administration to conduct such spying.

The Constitution says "We the People", but we have a President who seems to have forgotten this—he thinks it's "Me the People." From secret wiretapping programs to signing statements that cast aside the intent of Congress, this President has shredded constitutional protections and ignored the checks and balances that are essential to our democracy.

I urge my colleagues to defeat this bill, which has been rushed to the House Floor without sufficient evaluation. This bill will not make us safer. It will make everyday Americans more vulnerable to secret government eavesdropping conducted outside of the special court process that was designed to track terrorists without trampling on civil liberties.

Mr. PUTNAM. Mr. Speaker, I continue to reserve.

Mr. HASTINGS of Florida. Mr. Speaker, I yield myself the balance of my time to close.

Mr. Speaker, I urge Members to vote ''no'' on the previous question. If the previous question is defeated, I will amend the rule to provide that the House will immediately consider legislation that implements the recommendations of the 9/11 Commission, bipartisan commission, that this Congress has ignored up to this time.

Mr. Speaker, I ask unanimous consent to insert the text of the amendment and extraneous materials immediately prior to the vote on the previous question.

The SPEAKER pro tempore. Is there objection to the request of the gentleman from Florida?

There was no objection.

Mr. HASTINGS of Florida. Mr. Speaker, we have spent the past few days debating constitutionally suspect bills that are designed, in my opinion, to advance the Republican midterm election political agenda rather than make real progress in the serious war on terror.

The 9/11 Commission gave Congress failing grades for good reason; we have failed to do all we can to protect our citizens. Why don't we take a few hours to debate the proposals that this bipartisan panel of experts has advised would actually make our borders more secure and help us stop the next terrorist attack? A debate like this may not fit into the majority's midterm election strategy, but it might actually lead to some good policy.

Again, I urge a no vote on the previous question, so we can have a debate and vote on the recommendations of the bipartisan 9/11 Commission. Please vote ''no'' on this closed rule.

Mr. Speaker, I yield back the balance of my time.

Mr. PUTNAM. Mr. Speaker, it is my desire to bring this focus back to the issue at hand and bring something of a commonsense approach to this.

We are trying to modernize the FISA Act, the Foreign Intelligence Surveillance Act of 1978. Since 1978, there has been a technology revolution in communications: the Internet, cell phones, laptops, desktops for under $500, immediate, rapid, global, affordable communications on demand, satellite phones, GPS for $99. The bottom line is the terrorists can communicate, conspire, organize, recruit and train on a global basis from any spider hole, cave or clubhouse anywhere in the world.

We have to modernize the legislation that allows our intelligence agencies and our law enforcement officials to track down those bad guys, not after they have blown up the World Trade Center or after they have flown a plane into the Pentagon, but before they do those things. In other words, a September 12th mentality, as opposed to a September 10th mentality, the idea that we have to recommit ourselves to the notion that we are very much at war and that we are very much in grave danger by these radicals who have at their disposal all the tools that modern technology can provide and we are arming our law enforcement officials with 25-year-old authority.

To change that, to bring us out of the copper wire telephone world into the wireless, cellular satellite world, we have to pass this legislation. By passing this legislation, we can be assured that we are giving them everything that they need to disrupt terror attacks on our soil.

It seems to me to be a no-brainer that we should give them the tools to listen to anyone who is in regular communication with a member of al Qaeda, to anyone who is in regular communication with someone whose laptop is seized in a cave in Afghanistan after a firefight with allied forces, whose records are found in the desk drawer of a hotel in Hamburg that has been traced to be money laundering through Pakistan, through the European Union, through London, to set up cells in the United States, to buy airplane tickets, to send people to flight school.

Those are the tools that we have to give our law enforcement officials and intelligence agencies, just like the tools that we gave them when we tore down the walls that separated them and prevented them from communicating, just like the tools we gave them to track the movement of money that the terrorists were handling and these nation states who fund the terrorists were handling. Those are the tools that we give to reflect the nature of this global war on terror and to reflect the realities of modern communication technologies.

It is vitally important that we pass this bill. To pass the bill, we have to pass this rule.

The material previously referred to by Mr. HASTINGS of Florida is as follows:

PREVIOUS QUESTION FOR H. RES.—H.R. 5825—ELECTRONIC SURVEILLANCE MODERNIZATION ACT

At the end of the resolution add the following new Sections:

Sec. . Notwithstanding any other provisions in this resolution and without intervention of any point of order it shall be in order immediately upon adoption of this resolution for the House to consider the bill listed in Sec. :

Sec. . The bills referred to in Sec. . are as follows:

1) a bill to implement the recommendations of the 9/11 Commission.

THE VOTE ON THE PREVIOUS QUESTION: WHAT IT REALLY MEANS

This vote, the vote on whether to order the previous question on a special rule, is not merely a procedural vote. A vote against ordering the previous question is a vote against the Republican majority agenda and a vote to allow the opposition, at least for the moment, to offer an alternative plan. It is a vote about what the House should be debating.

Mr. Clarence Cannon's Precedents of the House of Representatives, (VI, 308–311) describes the vote on the previous question on the rule as ''a motion to direct or control the consideration of the subject before the House being made by the Member in charge.'' To defeat the previous question is to give the opposition a chance to decide the subject before the House. Cannon cites the Speaker's ruling of January 13, 1920, to the effect that ''the refusal of the House to sustain the demand for the previous question passes the control of the resolution to the opposition'' in order to offer an amendment. On March 15, 1909, a member of the majority party offered a rule resolution. The House defeated the previous question and a member of the opposition rose to a parliamentary inquiry, asking who was entitled to recognition. Speaker Joseph G. Cannon (R–Illinois) said: ''The previous question having been refused, the gentleman from New York, Mr. Fitzgerald, who had asked the gentleman to yield to him for an amendment, is entitled to the first recognition.''

Because the vote today may look bad for the Republican majority they will say ''the vote on the previous question is simply a vote on whether to proceed to an immediate vote on adopting the resolution * * * [and] has no substantive legislative or policy implications whatsoever.'' But that is not what they have always said. Listen to the Republican Leadership Manual on the Legislative Process in the United States House of Representatives, (6th edition, page 135). Here's how the Republicans describe the previous question vote in their own manual: Although it is generally not possible to amend the rule because the majority Member controlling the time will not yield for the purpose of offering an amendment, the same result may be achieved by voting down the previous question on the rule . . . When the motion for the previous question is defeated, control of the time passes to the Member who led the opposition to ordering the previous question. That Member, because he then controls the time, may offer an amendment to the rule, or yield for the purpose of amendment.''

Deschler's Procedure in the U.S. House of Representatives, the subchapter titled

''Amending Special Rules'' states: ''a refusal to order the previous question on such a rule [a special rule reported from the Committee on Rules] opens the resolution to amendment and further debate.'' (Chapter 21, section 21.2) Section 21.3 continues: Upon rejection of the motion for the previous question on a resolution reported from the Committee on Rules, control shifts to the Member leading the opposition to the previous question, who may offer a proper amendment or motion and who controls the time for debate thereon.''

Clearly, the vote on the previous question on a rule does have substantive policy implications. It is one of the only available tools for those who oppose the Republican majority's agenda to offer an alternative plan.

Mr. PUTNAM. Mr. Speaker, I yield back the balance of my time, and I move the previous question on the resolution.

The SPEAKER pro tempore. The question is on ordering the previous question.

The question was taken; and the Speaker pro tempore announced that the ayes appeared to have it.

Ms. HASTINGS of Florida. Mr. Speaker, on that I demand the yeas and nays.

The yeas and nays were ordered.

The SPEAKER pro tempore. Pursuant to clause 8 and clause 9 of rule XX, this 15-minute vote on ordering the previous question on H. Res. 1052 will be followed by 5-minute votes on adoption of H. Res. 1052, if ordered, and the motion to instruct conferees on H.R. 4954.

The vote was taken by electronic device, and there were—yeas 225, nays 197, not voting 10, as follows:

[Roll No. 498]

YEAS—225

Aderholt
Akin
Alexander
Bachus
Baker
Barrett (SC)
Bartlett (MD)
Barton (TX)
Bass
Beauprez
Biggert
Bilbray
Bilirakis
Bishop (UT)
Blackburn
Blunt
Boehlert
Boehner
Bonilla
Bonner
Bono
Boozman
Boustany
Bradley (NH)
Brady (TX)
Brown (SC)
Brown-Waite, Ginny
Burgess
Burton (IN)
Buyer
Calvert
Camp (MI)
Campbell (CA)
Cannon
Cantor
Capito
Carter
Chocola
Coble
Cole (OK)
Conaway
Crenshaw
Cubin
Culberson
Davis (KY)
Davis, Jo Ann
Davis, Tom
Deal (GA)
Dent
Diaz-Balart, L.
Diaz-Balart, M.
Doolittle
Drake
Dreier
Duncan
Ehlers
Emerson
English (PA)
Everett
Feeney
Ferguson
Fitzpatrick (PA)
Flake
Foley
Forbes
Fortenberry
Fossella
Foxx
Franks (AZ)
Frelinghuysen
Gallegly
Garrett (NJ)
Gerlach
Gibbons
Gilchrest
Gillmor
Gingrey
Gohmert
Goode
Goodlatte
Granger
Graves
Gutknecht
Hall
Harris
Hart
Hastings (WA)
Hayes
Hayworth
Hefley
Hensarling
Herger
Hobson
Hoekstra
Hostettler
Hulshof
Hunter
Hyde
Inglis (SC)
Issa
Istook
Jenkins
Jindal
Johnson (CT)
Johnson (IL)
Johnson, Sam
Jones (NC)
Keller
Kelly
Kennedy (MN)
King (IA)
King (NY)
Kingston
Kirk
Kline
Knollenberg
Kolbe
Kuhl (NY)
LaHood
Latham
LaTourette
Leach
Lewis (CA)
Lewis (KY)
Linder
LoBiondo
Lucas
Lungren, Daniel E.
Mack
Manzullo
Marchant
McCaul (TX)
McCotter
McCrery
McHenry
McHugh
McKeon
McMorris Rodgers
Mica
Miller (FL)
Miller (MI)
Miller, Gary
Moran (KS)
Murphy
Musgrave
Myrick
Neugebauer
Northup
Norwood
Nunes
Nussle
Osborne
Otter
Oxley
Paul
Pearce
Pence
Peterson (PA)
Petri
Pickering
Pitts
Platts
Poe
Pombo
Porter
Price (GA)
Pryce (OH)
Putnam
Radanovich
Ramstad
Regula
Rehberg
Reichert
Renzi
Reynolds
Rogers (AL)
Rogers (KY)
Rogers (MI)
Rohrabacher
Ros-Lehtinen
Royce
Ryan (WI)
Ryun (KS)
Saxton
Schmidt
Schwarz (MI)
Sensenbrenner
Sessions
Shadegg
Shaw
Sherwood
Shimkus
Shuster
Simmons
Simpson
Smith (NJ)
Smith (TX)
Sodrel
Souder
Stearns
Sullivan
Sweeney
Tancredo
Taylor (NC)
Terry
Thomas
Thornberry
Tiahrt
Tiberi
Turner
Upton
Walden (OR)
Walsh
Wamp
Weldon (FL)
Weldon (PA)
Weller
Westmoreland
Whitfield
Wicker
Wilson (NM)
Wilson (SC)
Wolf
Young (AK)
Young (FL)

NAYS—197

Abercrombie
Ackerman
Allen
Andrews
Baca
Baird
Baldwin
Barrow
Bean
Becerra
Berkley
Berman
Berry
Bishop (GA)
Bishop (NY)
Blumenauer
Boren
Boswell
Boucher
Boyd
Brady (PA)
Brown (OH)
Brown, Corrine
Butterfield
Capps
Capuano
Cardin
Carnahan
Carson
Case
Chandler
Clay
Cleaver
Clyburn
Conyers
Cooper
Costa
Costello
Cramer
Crowley
Cuellar
Cummings
Davis (AL)
Davis (CA)
Davis (FL)
Davis (IL)
Davis (TN)
DeFazio
DeGette
Delahunt
DeLauro
Dicks
Dingell
Doggett
Doyle
Edwards
Emanuel
Engel
Eshoo
Etheridge
Farr
Fattah
Filner
Ford
Frank (MA)
Gonzalez
Gordon
Green, Al
Green, Gene
Grijalva
Gutierrez
Harman
Hastings (FL)
Herseth
Higgins
Hinchey
Hinojosa
Holden
Holt
Honda
Hooley
Hoyer
Inslee
Israel
Jackson (IL)
Jackson-Lee (TX)
Jefferson
Johnson, E. B.
Jones (OH)
Kanjorski
Kaptur
Kennedy (RI)
Kildee
Kilpatrick (MI)
Kind
Kucinich
Langevin
Lantos
Larsen (WA)
Larson (CT)
Lee
Levin
Lipinski
Lofgren, Zoe
Lowey
Lynch
Maloney
Markey
Marshall
Matheson
Matsui
McCarthy
McCollum (MN)
McDermott
McGovern
McIntyre
McKinney
McNulty
Meek (FL)
Meeks (NY)
Melancon
Michaud
Millender-McDonald
Miller (NC)
Miller, George
Mollohan
Moore (KS)
Moore (WI)
Moran (VA)
Murtha
Nadler
Napolitano
Neal (MA)
Oberstar
Obey
Olver
Ortiz
Owens
Pallone
Pascrell
Pastor
Payne
Pelosi
Peterson (MN)
Pomeroy
Price (NC)
Rahall
Rangel
Reyes
Ross
Rothman
Roybal-Allard
Ruppersberger
Rush
Ryan (OH)
Sabo
Salazar
Sánchez, Linda T.
Sanchez, Loretta
Sanders
Schakowsky
Schiff
Schwartz (PA)
Scott (GA)
Scott (VA)
Serrano
Shays
Sherman
Skelton
Slaughter
Smith (WA)
Snyder
Solis
Spratt
Stark
Tanner
Tauscher
Taylor (MS)
Thompson (CA)
Thompson (MS)
Tierney
Towns
Udall (CO)
Udall (NM)
Van Hollen
Velázquez
Visclosky
Wasserman Schultz
Waters
Watson
Watt
Waxman
Weiner
Wexler
Woolsey
Wu
Wynn

NOT VOTING—10

Cardoza
Castle
Chabot
Evans
Green (WI)
Lewis (GA)
Meehan
Ney
Strickland
Stupak

□ 1905

Messrs. GEORGE MILLER of California, WEINER, and LARSON of Connecticut changed their vote from ''yea'' to ''nay.''

Mr. GIBBONS changed his vote from ''nay'' to ''yea.''

So the previous question was ordered.

The result of the vote was announced as above recorded.

CONFERENCE REPORT ON H.R. 5441, DEPARTMENT OF HOMELAND SECURITY APPROPRIATIONS ACT, 2007

Mr. ROGERS of Kentucky submitted the following conference report and statement on the bill (H.R. 5441) making appropriations for the Department of Homeland Security for the fiscal year ending September 30, 2007, and for other purposes:

CONFERENCE REPORT (HOUSE REPT. NO. 109–699)

The committee of conference on the disagreeing votes of the two Houses on the amendment of the Senate to the bill (H.R. 5441) ''making appropriations for the Department of Homeland Security for the fiscal year ending September 30, 2007, and for other purposes'', having met, after full and free conference, have agreed to recommend and do recommend to their respective Houses as follows:

That the House recede from its disagreement to the amendment of the Senate, and agree to the same with an amendment, as follows:

In lieu of the matter stricken and inserted by said amendment, insert:

That the following sums are appropriated, out of any money in the Treasury not otherwise appropriated, for the fiscal year ending September 30, 2007, for the Department of Homeland Security and for other purposes, namely:

TITLE I

DEPARTMENTAL MANAGEMENT AND OPERATIONS

OFFICE OF THE SECRETARY AND EXECUTIVE MANAGEMENT

For necessary expenses of the Office of the Secretary of Homeland Security, as authorized by section 102 of the Homeland Security Act of 2002 (6 U.S.C. 112), and executive management of the Department of Homeland Security, as authorized by law, $94,470,000: Provided, That not to exceed $40,000 shall be for official reception and representation expenses: Provided further, That of the funds provided under this heading, $5,000,000 shall not be available for obligation until the Secretary of Homeland Security submits a comprehensive port, container, and cargo security strategic plan to the Committees on Appropriations of the Senate and the House of Representatives; the Committee on Homeland Security of the House of Representatives; the Committee on Homeland Security and Governmental Affairs of the Senate; and the Committee on Commerce, Science, and Transportation of the Senate that requires screening all inbound cargo, doubles the percentage of inbound cargo