

Mr. HOYER. The preambles are your conclusions. I would therefore, with the question divided, I would hope, very frankly, Mr. Leader, as my resolution did, it did not make conclusions. It simply asserted that we ought to look into the matter. Your resolve clause says that. We will support that, but we will not support the conclusions.

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

Mr. BOEHNER. Madam Speaker, I appreciate the work of the majority leader, and for the benefit of all Members basically, the motion that the gentleman offers would strike the "whereases" contained in the resolution and leave the resolved clauses in place.

I appreciate his support and hope this will allow us to move on.

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

The SPEAKER pro tempore. Pursuant to the previous order of the House, the Chair will first put the question on the matter following the resolved clause, followed by putting the question on the preamble.

The question is on the resolution.

The resolution was agreed to.

The SPEAKER pro tempore. The question is on the preamble.

The preamble was not agreed to.

A motion to reconsider was laid on the table.

□ 1915

IMPROVING FOREIGN INTELLIGENCE SURVEILLANCE TO DEFEND THE NATION AND THE CONSTITUTION ACT OF 2007

Mr. CONYERS. Madam Speaker, I move to suspend the rules and pass the bill (H.R. 3356) to amend the Foreign Intelligence Surveillance Act of 1978 to establish a procedure for authorizing certain electronic surveillance.

The Clerk read the title of the bill.

The text of the bill is as follows:

H.R. 3356

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled,

SECTION 1. SHORT TITLE.

This Act may be cited as the "Improving Foreign Intelligence Surveillance to Defend the Nation and the Constitution Act of 2007".

SEC. 2. PURPOSE.

The purpose of this Act is to facilitate the acquisition of foreign intelligence information by providing for the electronic surveillance of persons reasonably believed to be outside the United States pursuant to methodologies proposed by the Attorney General, reviewed by the Foreign Intelligence Surveillance Court, and applied by the Attorney General without further court approval, unless otherwise required under the Foreign Intelligence Surveillance Act of 1978 (50 U.S.C. 1801 et seq.).

SEC. 3. ADDITIONAL PROCEDURE FOR AUTHORIZING CERTAIN ELECTRONIC SURVEILLANCE.

(a) IN GENERAL.—The Foreign Intelligence Surveillance Act of 1978 (50 U.S.C. 1801 et seq.) is amended by inserting after section 105 the following:

"CLARIFICATION OF ELECTRONIC SURVEILLANCE OF PERSONS OUTSIDE THE UNITED STATES

"SEC. 105A. Notwithstanding any other provision of this Act, a court order is not required for the acquisition of the contents of any communication between persons that are not located within the United States for the purpose of collecting foreign intelligence information, without respect to whether the communication passes through the United States or the surveillance device is located within the United States.

"ADDITIONAL PROCEDURE FOR AUTHORIZING CERTAIN ELECTRONIC SURVEILLANCE

"SEC. 105B. (a) IN GENERAL.—Notwithstanding any other provision of this title, the Attorney General, upon the authorization of the President, may apply to a judge of the court established under section 103(a) for an ex parte order, or an extension of an order, authorizing electronic surveillance for periods of not more than 1 year, for the purpose of acquiring foreign intelligence information, in accordance with this section.

"(b) APPLICATION.—

"(1) SPECIFIC PERSONS AND PLACES NOT REQUIRED.—An application for an order, or extension of an order, submitted under subsection (a) shall not be required to identify—

"(A) the persons, other than a foreign power, against whom electronic surveillance will be directed; or

"(B) the specific facilities, places, premises, or property at which the electronic surveillance will be directed.

"(2) CONTENTS.—An application for an order, or extension of an order, submitted under subsection (a) shall include—

"(A) a statement that the electronic surveillance is directed at persons reasonably believed to be outside the United States;

"(B) the identity of the Federal officer seeking to conduct such electronic surveillance;

"(C) a description of—

"(i) the methods to be used by the Attorney General to determine, during the duration of the order, that there is a reasonable belief that the targets of the electronic surveillance are persons outside the United States; and

"(ii) the procedures to audit the implementation of the methods described in clause (i) to achieve the objective described in that clause;

"(D) a description of the nature of the information sought, including the identity of any foreign power against whom electronic surveillance will be directed; and

"(E) a statement of the means by which the electronic surveillance will be effected and such other information about the surveillance techniques to be used as may be necessary to assess the proposed minimization procedures.

"(c) APPLICATION APPROVAL; ORDER.—

"(1) APPLICATION APPROVAL.—A judge considering an application for an order, or extension of an order, submitted under subsection (a) shall approve such application if the Attorney General certifies in writing under oath, and the judge upon consideration of the application determines, that—

"(A) the acquisition does not constitute electronic surveillance within the meaning of paragraph (1) or (3) of section 101(f);

"(B) the methods described by the Attorney General under subsection (b)(2)(B)(i) are reasonably designed to determine whether the persons are outside the United States;

"(C) a significant purpose of the electronic surveillance is to obtain foreign intelligence information;

"(D) the proposed minimization procedures meet the definition of minimization procedures under section 101(h).

"(2) ORDER.—A judge approving an application pursuant to paragraph (1) shall issue an order that—

"(A) authorizes electronic surveillance as requested, or as modified by the judge;

"(B) requires a communications service provider, custodian, or other person who has the lawful authority to access the information, facilities, or technical assistance necessary to accomplish the electronic surveillance, upon the request of the applicant, to furnish the applicant forthwith with such information, facilities, or technical assistance in a manner that will protect the secrecy of the electronic surveillance and produce a minimum of interference with the services that provider, custodian, or other person is providing the target of electronic surveillance;

"(C) requires such communications service provider, custodian, or other person, upon the request of the applicant, to maintain under security procedures approved by the Attorney General and the Director of National Intelligence any records concerning the acquisition or the aid furnished;

"(D) directs the Federal Government to compensate, at the prevailing rate, a person for providing information, facilities, or assistance pursuant to such order; and

"(E) directs the applicant to follow the minimization procedures as proposed or as modified by the court.

"(3) ASSESSMENT OF COMPLIANCE WITH MINIMIZATION PROCEDURES.—At or before the end of the period of time for which electronic surveillance is approved by an order or an extension under this section, the judge may assess compliance with the minimization procedures by reviewing the circumstances under which information concerning United States persons was acquired, retained, or disseminated.

"(d) GUIDELINES FOR SURVEILLANCE OF UNITED STATES PERSONS.—Not later than 15 days after the date of the enactment of this section, the Attorney General shall establish guidelines that are reasonably designed to ensure that an application is filed under section 104, if otherwise required by this Act, when the Attorney General seeks to initiate electronic surveillance, or continue electronic surveillance that began under this section, of a United States person.

"(e) SUBMISSION OF ORDERS, GUIDELINES, AND AUDITS.—

"(1) ORDERS.—Upon the entry of an order under subsection (c)(2), the Attorney General shall submit to the appropriate committees of Congress such order.

"(2) GUIDELINES.—Upon the establishment of the guidelines under subsection (d), the Attorney General shall submit to the appropriate committees of Congress and the court established under section 103(a) such guidelines.

"(3) AUDITS.—Not later than 60 days after the date of the enactment of this section, and every 60 days thereafter until the expiration of all orders issued under this section, the Inspector General of the Department of Justice shall complete an audit on the compliance with the guidelines established under subsection (d) and shall submit to the appropriate committees of Congress, the Attorney General, the Director of National Intelligence, and the court established under section 103(a)—

"(A) the results of such audit;

"(B) a list of any targets of electronic surveillance under this section determined to be in the United States; and

"(C) the number of persons in the United States whose communications have been intercepted under this section.

"(f) IMMEDIATE EMERGENCY AUTHORIZATION.—

“(1) IN GENERAL.—Notwithstanding any other provision of this title, during the first 15 days following the date of the enactment of this section, upon the authorization of the President, the Attorney General may authorize electronic surveillance without a court order under this title until the date that is 15 days after the date on which the Attorney General authorizes such electronic surveillance if the Attorney General determines—

“(A) that an emergency situation exists with respect to the employment of electronic surveillance to obtain foreign intelligence information before an order authorizing such surveillance can with due diligence be obtained; and

“(B) the electronic surveillance will be directed at persons reasonably believed to be outside the United States.

“(2) PENDING ORDER.—

“(A) INITIAL EXTENSION.—If at the end of the period in which the Attorney General authorizes electronic surveillance under paragraph (1), the Attorney General has submitted an application for an order under subsection (a) but the court referred to in section 103(a) has not approved or disapproved such application, such court may authorize the Attorney General to extend the emergency authorization of electronic surveillance under paragraph (1) for not more than 15 days.

“(B) SUBSEQUENT EXTENSION.—If at the end of the extension of the emergency authorization of electronic surveillance under subparagraph (A) the court referred to in section 103(a) has not approved or disapproved the application referred to in subparagraph (A), such court may authorize the Attorney General to extend the emergency authorization of electronic surveillance under paragraph (1) for not more than 15 days.

“(3) MAXIMUM LENGTH OF AUTHORIZATION.—Notwithstanding paragraphs (1) and (2), in no case shall electronic surveillance be authorized under this subsection for a total of more than 45 days without a court order under this title.

“(4) MINIMIZATION PROCEDURES.—The Attorney General shall ensure that any electronic surveillance conducted pursuant to paragraph (1) or (2) is in accordance with minimization procedures that meet the definition of minimization procedures in section 101(h).

“(5) INFORMATION, FACILITIES, AND TECHNICAL ASSISTANCE.—Pursuant to an authorization of electronic surveillance under this subsection, the Attorney General may direct a communications service provider, custodian, or other person who has the lawful authority to access the information, facilities, or technical assistance necessary to accomplish such electronic surveillance to—

“(A) furnish the Attorney General forthwith with such information, facilities, or technical assistance in a manner that will protect the secrecy of the electronic surveillance and produce a minimum of interference with the services that provider, custodian, or other person is providing the target of electronic surveillance; and

“(B) maintain under security procedures approved by the Attorney General and the Director of National Intelligence any records concerning the acquisition or the aid furnished.

“(g) PROHIBITION ON LIABILITY FOR PROVIDING ASSISTANCE.—Section 105(i), relating to protection from liability for the furnishing of information, facilities, or technical assistance pursuant to a court order under this Act, shall apply to this section.

“(h) EFFECT OF SECTION ON OTHER AUTHORITIES.—The authority under this section is in addition to the authority to conduct elec-

tronic surveillance under sections 104 and 105.

“(i) APPROPRIATE COMMITTEES OF CONGRESS DEFINED.—In this section, the term ‘appropriate committees of Congress’ means—

“(1) the Select Committee on Intelligence and the Committee on the Judiciary of the Senate; and

“(2) the Permanent Select Committee on Intelligence and the Committee on the Judiciary of the House of Representatives.”.

(b) TECHNICAL AND CONFORMING AMENDMENT.—The table of contents in the first section of the Foreign Intelligence Surveillance Act of 1978 (50 U.S.C. 1801 et seq.) is amended by inserting after the item relating to section 105 the following:

“Sec. 105A. Clarification of electronic surveillance of persons outside the United States.

“Sec. 105B. Additional procedure for authorizing certain electronic surveillance.”.

(c) SUNSET.—

(1) IN GENERAL.—Except as provided in paragraph (2), effective on the date that is 120 days after the date of the enactment of this Act, sections 105A and 105B of the Foreign Intelligence Surveillance Act of 1978, as added by subsection (a), are hereby repealed.

(2) EXCEPTION.—Any order under section 105B of the Foreign Intelligence Surveillance Act of 1978, as added by this Act, in effect on such date that is 120 days after the date of the enactment of this Act, shall continue in effect until the date of the expiration of such order.

The SPEAKER pro tempore. Pursuant to the rule, the gentleman from Michigan (Mr. CONYERS) and the gentleman from Texas (Mr. SMITH) each will control 20 minutes.

The Chair recognizes the gentleman from Michigan.

GENERAL LEAVE

Mr. CONYERS. Madam Speaker, I ask unanimous consent that all Members have 5 legislative days to revise and extend their remarks and include extraneous material on the bill under consideration.

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

There was no objection.

Mr. CONYERS. Madam Speaker, I yield 10 minutes to the distinguished gentleman from Texas, SILVESTRE REYES, chairman of the Committee on Intelligence, and ask unanimous consent that he be allowed to control that time.

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

There was no objection.

Mr. CONYERS. Madam Speaker, I yield myself such time as I may consume.

There probably is no Member in this body who has a greater concern about civil rights and civil liberties than this Member. It is a cause I have worked on for all of my years in this body, and it is one that goes to the very heart of the protections provided under the Constitution and our Bill of Rights.

I am equally sensitive to the need to protect our Nation from terrorism and terrorists. I have chaired recently three classified briefings on this mat-

ter in the last week and have spent the last period of time seeking to forge common ground on this issue.

That is why we are here today, to ensure that our government has the tools it needs to respond to the threat of terrorism, while at the same time respecting our citizens' right to privacy.

That is why the bill before us permits the Attorney General to apply to the FISA court to obtain a basket of warrants for the surveillance aimed outside of the United States. That is why we provide an emergency exception. That is why we specify that foreign-to-foreign communications do not require a court order. These are all changes to current law that will help our Nation respond to the threat of terrorism.

At the same time, however, the legislation is respectful of our civil liberties. That is why we sunset the bill in 4 months, to see if this stop gap approach is working, how it is working, and allow us to gather further information. That is why we require that the court approve international surveillance procedures. That is why we insist on periodic audits. None of these safeguards exist under the current law, and all will serve to protect our precious rights and liberties.

The bill before us today responds to each and every concern raised by the distinguished Director of National Intelligence in our negotiations. In particular, yesterday he asked us to make three changes: expanding the bill to cover foreign intelligence; allowing the administration to approve guidelines for recurring communications; and allowing additional foreign targets to be added to the warrant by the court. I was concerned that some of these changes may have gone too far, but in the spirit of accommodation we made all three changes. Sometimes people simply don't want to accept “yes” for an answer.

I urge every Member in this body to support this important and balanced measure.

Madam Speaker, I include for the RECORD today's New York Times editorial entitled “Stampeding Congress, Again.”

[From the New York Times]

STAMPEDING CONGRESS, AGAIN

Since the 9/11 terrorist attacks, the Bush administration has repeatedly demonstrated that it does not feel bound by the law or the Constitution when it comes to the war on terror. It cannot even be trusted to properly use the enhanced powers it was legally granted after the attacks.

Yet, once again, President Bush has been trying to stampede Congress into a completely unnecessary expansion of his power to spy on Americans. And, hard as it is to believe, Congressional Republicans seem bent on collaborating, while Democrats (who can still be cowed by the White House's with-us-or-against-us baiting) aren't doing enough to stop it.

The fight is over the 1978 Foreign Intelligence Surveillance Act, which requires the government to obtain a warrant before eavesdropping on electronic communications that involve someone in the United States. The test is whether there is probably cause

to believe that the person being communicated with is an agent of a foreign power or a terrorist.

Mr. Bush decided after 9/11 that he was no longer going to obey that law. He authorized the National Security Agency to intercept international telephone calls and e-mail messages of Americans and other residents of this country without a court order. He told the public nothing and Congress next to nothing about what he was doing, until *The Times* disclosed the spying in December 2005.

Ever since, the White House has tried to pressure Congress into legalizing Mr. Bush's rogue operation. Most recently, it seized on a secret court ruling that spotlighted a technical way in which the 1978 law has not kept pace with the Internet era.

The government may freely monitor communications when both parties are outside the United States, but must get a warrant aimed at a specific person for communications that originate or end in his country. The *Los Angeles Times* reported yesterday that the court that issues such warrants recently ruled that the law also requires that the government seek such an individualized warrant for purely foreign communications that, nevertheless, move through American data networks.

Instead of asking Congress to address this anachronism, as it should, the White House sought to use it to destroy the 1978 spying law. It proposed giving the attorney general carte blanche to order eavesdropping on any international telephone calls or e-mail messages if he decided on his own that there was a "reasonable belief" that the target of the surveillance was outside the United States. The attorney general's decision would not be subject to court approval or any supervision.

The White House, of course, insisted that Congress must do this right away, before the August recess that begins on Monday—the same false urgency it used to manipulate Congress into passing the Patriot Act without reading it and approving the appalling Military Commissions Act of 2006.

Senator Jay Rockefeller, the chairman of the Senate Intelligence Committee, offered a sensible alternative law, as did his fellow Democrat, Senator Russ Feingold. In either case, the attorney general would be able to get a broad warrant to intercept foreign communications routed through American networks for a limited period. Then, he would have to justify the spying in court. This fix would have an expiration date so Congress could then dispassionately consider what permanent changes might be needed to FISA.

Congress was debating this issue yesterday, and the final outcome was unclear. But there are very clear lines that must not be crossed.

First, all electronic surveillance of communication that originates or ends in the United States must be subject to approval and review by the FISA court under the 1978 law. (That court, by the way, has rejected only one warrant in the last two years.)

Second, any measure Congress approves now must have a firm expiration date. Closed-door-meetings under the pressure of a looming vacation are no place for such serious business.

The administration and its Republican supporters in Congress argue that American intelligence is blinded by FISA and have seized on neatly timed warnings of heightened terrorist activity to scare everyone. It is vital for Americans, especially law-makers, to resist that argument. It is pure propaganda.

This is not, and has never been, a debate over whether the United States should conduct effective surveillance of terrorists and their supporters. It is over whether we are a

nation ruled by law, or the whims of men in power. Mr. Bush faced that choice and made the wrong one. Congress must not follow him off the cliff.

I reserve the balance of my time.

Mr. SMITH of Texas. Madam Speaker, I yield myself such time as I may consume.

Madam Speaker, this bill should be opposed by anyone who wants to protect America from terrorists.

It is a pitiful sight to see the majority denying the Director of National Intelligence the tools he needs to protect our country from terrorist attacks. The director warned Congress that "the House proposal would not allow me to carry out my responsibility to provide warning and to protect the Nation, especially in our heightened threat environment."

According to the Director, the current Foreign Intelligence Surveillance Act of 1978, or FISA, does not allow the intelligence community to be effective. Specifically, the Director is unable to collect crucial information involving foreign terrorists.

Neither the Constitution nor Federal law restricts the ability of law enforcement or intelligence agents to monitor overseas communications; however, the bill would require the Director to obtain a court order to monitor calls from a foreign country to the United States. For instance, a foreign terrorist in Iraq who calls another terrorist in New York City would require or could require a court order. That jeopardizes American lives.

We are a Nation at war with foreign terrorists who continue to plan deadly attacks against America. We have an urgent need to modernize the Foreign Intelligence Surveillance Act.

Telecommunications technology has evolved dramatically over the last 30 years. Terrorist tactics are constantly changing in response to our efforts to disrupt their plots, and essential tools that we use must be modernized to keep up with this changing environment.

The safety of Americans depends on action by Congress. Al Qaeda recently released a video promising a big surprise in coming weeks. This threat, along with other activity, has heightened the concern among our intelligence agencies. Unfortunately, this bill fails to provide the fix that the Director has repeatedly told us is urgent.

First, the bill sunsets in 120 days. In 4 months, we will be right back where we started, dealing with the issue once again.

Second, the bill imposes bureaucratic requirements on the FISA process that will hamper efforts to protect America.

Third, the bill will interject the FISA court into a role that it has never had before. The bill will make it harder for the Director to do his job.

The majority could have solved the problem months ago. In April, the Director submitted to Congress a comprehensive proposal to modernize FISA. That proposal should already

have been enacted. The majority failed to do so.

I hope, Madam Speaker, that there are no attacks before we revisit the issue and do what we should have done today. I urge my colleagues to oppose this legislation.

I reserve the balance of my time.

Mr. REYES. Madam Speaker, we are in times of peril for a great country. All of us I think agree on that.

As I listened to the previous debates, the one providing assistance to Minnesota and also the one discussing the resolution prior to us coming on the floor, I was reflecting on the many men and women around the world that right now are putting their lives on the line to keep this country safe. They don't do it for glory; they don't do it for fame. They do it with an inherent trust in us that we will do the right thing to provide them the proper tools to do their jobs and keep us safe. That is what this bill does.

Mike McConnell, the Director of the National Intelligence Service, came to us and asked us for three things initially.

We gave him those three things. He told us we were at a time of heightened threats. We recognize that; so we worked in a bipartisan manner with the DNI to craft a bill, only to be told that it wasn't everything that he needed, yesterday.

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We can't afford to leave and go on recess without passing this critical piece of legislation. This piece of legislation that sunsets in 120 days gives him the tools that he needs to keep us safe and to keep the trust with those men and women around the world that expect us to do the right thing.

With that, I reserve the balance of my time.

Mr. SMITH of Texas. Madam Speaker, I yield 2 minutes to the distinguished minority whip, the gentleman from Missouri (Mr. BLUNT).

Mr. BLUNT. I thank the gentleman for yielding.

This is clearly a critical debate. The spirit of the chairmen, Chairman REYES and Chairman CONYERS both, are exactly right in our need to solve this. My concern is that we're not in a place where we're about to solve it yet. The very worst thing I actually think we could do is pass a bill, have the Senate pass a separate bill, all go home and say we tried to solve this problem and didn't get it solved.

I'm most concerned, in this effort to get two-thirds of the Members to agree, that the Director of National Intelligence thinks this bill isn't the right bill and apparently our friends on the other side of the building are not in agreement yet that this is the right bill. I just say, whatever we do, let's not cast a vote here only so we can say we did something. Let's figure out how to do something that exactly makes a difference. Let's figure out how to do something that gets signed into law.

Let's figure out how to do something so that these enemies of ours, truly we're doing everything we can to listen to what they say, to try to track their actions, to try to anticipate what they're going to do.

This is clearly a very dangerous time for the country and the world. It's easier to follow up on the activities under our law of organized crime or even white collar crime than it is at this moment to follow up on the activities of our enemies in the terrorist camps of the world.

I hope, Madam Speaker, that we don't just take a vote for the sake of having a vote and, if this bill does fail, we all continue to work for however long is necessary to arrive at an agreement in this building that winds up with a bill on the President's desk that winds up with our intelligence agencies doing everything they can.

Mr. CONYERS. I am now pleased to recognize the chairman of the Constitution Subcommittee, the gentleman from New York, JERRY NADLER, for 1 minute.

Mr. NADLER. Madam Speaker, we were told by the administration, by the Director of National Intelligence, a couple of weeks ago that they needed two things: They needed to clarify that we didn't need a court order for a foreign-to-foreign communications. This bill does it. They needed an assurance that telecommunications companies would be compelled to assist in gathering of national security information under this bill. This bill contains it.

Yesterday, we were told they needed three more things: They needed that we should deal with not just relating to terrorism but to matters relating to our foreign intelligence. It's in this bill. We were told we should eliminate the requirement that the FISA Court adjudicate our recurring communications to the U.S. from foreign targets would be handled. It's in this bill. We were told that we should allow for foreign targets to be added to the basket warrant after the warrant was approved. It's in this bill.

The DNI, Admiral McConnell, said that this bill would significantly enhance America's security until he spoke to the White House, and now he changes politically, and he says we need more. This is the bill that gives them everything they said they needed. It's the bill we should pass to protect our civil liberties, and we should go no further.

Mr. SMITH of Texas. Mr. Speaker, I yield 2 minutes to the gentleman from Arizona (Mr. FRANKS), a member of the Judiciary Committee.

Mr. FRANKS of Arizona. I thank the gentleman.

Madam Speaker, over the past three decades, the Foreign Intelligence Surveillance Act has become increasingly archaic, and our intelligence community has been inhibited from acting with speed and agility to conduct necessary surveillance of foreign targets. The consequence of missing terrorist

communications materialized before our eyes on the morning of 9/11; and, Madam Speaker, in the eyes of our enemy, 9/11 is only the beginning.

Madam Speaker, if we knew exactly where every terrorist in the world was at this moment, the war on jihad would be, in practical terms, over in about 6 weeks. However, in this 21st century, it is intelligence that is our most critical challenge. Without intelligence, our entire national defense structure is rendered ineffective and the lives of millions of Americans are placed at the mercy of an enemy possessed with a merciless ideology and a relentless vision of the Western World in nuclear flames.

Just this week, Madam Speaker, a new al Qaeda propaganda ad appeared on the Internet entitled, "Wait for the Big Surprise." And it closed with these words: "Soon, God willing."

Just today, Madam Speaker, the Director of National Intelligence issued an unequivocal statement that the bill we are now considering is an unacceptable solution and one that would keep him from fulfilling his duty to anticipate threats and to protect our Nation.

Madam Speaker, al Qaeda will not adjourn when we do. Today, this night, is our opportunity to address this vital issue. If we let partisan bickering cause us to fail, we should start now to write our apology to the children of the next generation who may see nuclear jihad and the generation beyond that that may see dangers beyond our imagination.

Madam Speaker, we must not fail.

Mr. REYES. Madam Speaker, it is now my privilege to yield 3 minutes to the gentleman from Massachusetts (Mr. TIERNEY).

Mr. TIERNEY. I thank the gentleman for yielding.

Madam Speaker, for some time now, for months, the administration has been contending that it needed relief from a warrant obligation to intercept communications between a foreign agent and a foreign agent. But we all know that doesn't apply. You don't need a warrant in those situations. So it has long been our contention that that wasn't needed and we did not need to approve the administration's sweeping request for the authority to tap every American citizen based on that premise. We offered legislation to just clarify that fact, and the Republicans voted against it, and the administration turned it down.

Now, last week, the DNI came forward and informed us of a critical collection gap in electronic surveillance. So we went to work again and met with the DNI to try to resolve and identify just what it was and negotiate a resolution. We did that despite the fact the administration has been withholding documentation that would help us do that.

But now the President has started to politicize it. He took to the airwaves and began pressing for essentially warrantless surveillance and searches

on all Americans' phone calls, e-mails, homes, offices and personal records for at least 3 months and probably a lot longer than that by virtue of heading all the way through the appeals process.

He also sought authority to search concerning a person abroad. Didn't even have to target a person abroad, a foreign person. In other words, the search did not have to be directed in that direction, just concerning a person abroad.

It would also authorize any search inside the United States if the government can claim it concerns an al Qaeda or affiliate.

And it also sought authority for the Attorney General to authorize surveillance into and out of the United States with a court review only to determine that the procedures of the Attorney General clearly were erroneous; and, even if they found that, it was only advisory, apparently, because there was no remedy. No review or audit by a Department of Justice Inspector General to see how this was implemented. No sunset provision forcing review. Essentially an indefinite suspension of our constitutional rights and our civil liberties. Based on the word of this Attorney General? This one? And this President?

Intercepts United States citizens without finding a foreign agent is involved; rather, only that the conversations were believed. By this Attorney General? To concern people that were involved with al Qaeda? For any foreign intelligence, not just those related to terror or al Qaeda-related. No clerk, no judge, nobody in the balance to review this. No sunset.

The rule of law is still critical in this country. It is exactly when the government thinks that it can be the sole fair arbiter that we most need a judicial system to stand in and strike the balance. Even after our leadership agreed to do what the DNI mostly wanted, this administration still turned it down, still was on TV, still politicizing this effort.

Let's tell the President that we don't need a politician right now in the White House, we need a leader, somebody to stand up and draw this country together, somebody to make sure that we get the intelligence we need, that knows how to say "yes" when the DNI's requests are done.

The President went on TV saying that when the DNI told him that the deal was acceptable, that the war would work, he would accept it. Well, when the DNI talked to Democrats and leadership and said he was fine with what they suggested, a change would work, he went back to the White House and instead we got this sweeping law.

Let's make our Constitution work. We can have security and our civil liberties.

Mr. SMITH of Texas. Madam Speaker, I yield 1 minute to my friend and colleague from Texas and a member of the Homeland Security Committee (Mr. MCCAUL).

Mr. McCAUL of Texas. I thank the gentleman for yielding.

Madam Speaker, our most solemn duty in the United States Congress is to protect the American people; and while this bill may be well intentioned, it fails to do that. In fact, just the opposite. It puts the American people in great danger.

Before running for Congress, I worked in the Justice Department. I worked on national security, wiretaps or FISAs. The intention of the FISA Act was never to apply to agents of a foreign power in a foreign country. It was to apply to agents of a foreign power in this country. This bill does just the opposite. It expands it to bar a collection of foreign intelligence on foreign targets in foreign countries.

FISA is a cumbersome and time-consuming process. I am concerned that if we cannot collect intelligence overseas that we cannot protect our war fighter in the battlefield. We put them in danger, and we put the citizens of this country in danger.

We all know that al Qaeda is looking at hitting us again. It may be very soon. And with the anniversary of 9/11 approaching, we must do everything we can to protect her.

Mr. CONYERS. Madam Speaker, I am happy to yield to the Chair of the Immigration subcommittee in the House of Representatives Judiciary Committee, ZOE LOFGREN of California, 1 minute.

Ms. ZOE LOFGREN of California. Madam Speaker, I think that there is common ground here in the House despite some of the comments we have just met. We all know from the press reports and Admiral McConnell himself that there is a need to make sure that we intercept communications, foreign to foreign, and I think there is 100 percent agreement in this House on that point. I would note that line 18 of the second page of the bill makes that abundantly clear.

We all know that, as technology changes, we need to continually update our laws to make sure that they work well in a changing environment. We have this bill for 120 days if we do, as we know we must, pass it. I think of that 120 days as an assignment for the Congress, so that we understand the technology, so that we can make good decisions.

This is a cell phone. If I bring this cell phone to London and call San Jose, the phone company knows I'm in London and the call is made to San Jose.

Mr. SMITH of Texas. Madam Speaker, I yield 1 minute to the gentleman from Arizona, a member of the Energy and Commerce Committee (Mr. SHAD-EGG).

Mr. SHADEGG. I thank the gentleman for yielding.

I think the gentlelady is correct. I think intellectually we could come to an agreement.

Sadly, the language of this bill is fatally flawed. Page 3, line 18, the language she refers to is not workable for

reasons that I think both sides understand. It says that no warrant is required when you know that both persons are outside the United States. It is impossible to know that both the person placing the call and the person receiving the call are outside the United States. So section 3 grants no authority whatsoever. You might as well make it blank paper, because it does not give us any authority, even if well-intended.

□ 1945

Second, the bill, for the first time in the 200-year history of this Nation, says that when our executive branch wants to gather foreign-to-foreign intelligence, it must first go to the judiciary. That is a violation of the Constitution, and it places the duty for protecting American citizens in the hands of unelected judges.

In reality in this Nation, the duty to protect us from enemies foreign and domestic is in the hands of the executive branch.

This legislation is fatally flawed, even if well intended.

Mr. REYES. Madam Speaker, I now would like to yield 45 seconds to the gentleman from New Jersey (Mr. HOLT).

Mr. HOLT. Madam Speaker, I thank the chairman of the committee for yielding.

One of the characteristics of oppressive governments that we detest is that they spy on their own people. The chilling intrusion into people's lives, effects, and relationships must be controlled even if the government's officers think the intrusion is necessary to preserve safety, security, and order. Indeed, civil protections are necessary, especially if the government officers say they are trying to protect safety, security, and order.

Courts must establish that there is a probable cause to believe an American is a threat to society, and it must be the courts, not the Attorney General, not the Director of National Intelligence, who determine that the standard is met.

The issue here is not about foreign-to-foreign intercepts. It is about how our government treats its citizens.

Mr. SMITH of Texas. Madam Speaker, I yield 2 minutes to the gentleman from California (Mr. DANIEL E. LUNGREN), who is a member of both the Judiciary Committee and the Homeland Security Committee.

Mr. DANIEL E. LUNGREN of California. I thank the gentleman for yielding.

Madam Speaker, I am dismayed to hear some suggest that Admiral McConnell would somehow yield to political pressure. This is the gentleman who was the NSA Director under President Clinton. I never heard that argument on that side of the aisle or this side of the aisle. Many of us relied on the intelligence that came through his activity at that point in time. I see nothing in his record, I see nothing in

his performance that would suggest that he would yield to politics.

He has come before us and said, We have tried to work under what is the legal construct that you are repeating in this bill, and it doesn't work. He has said it has denied him the opportunity to do that kind of foreign-to-foreign intelligence gathering because of the way the law is applied and because of the way the judge has interpreted it. And he even told us the judge said, Go to the Congress to change it.

You don't have to be against civil liberties to suggest that we listen to what he has to say. When he talks about the minimization procedure, it is a time-honored procedure we have used for 28 years in this context and for over 50 years in the criminal justice context.

If people will recall, when FISA was first written, it was specifically written to exclude international signals, intelligence activities, and electronic surveillance conducted outside the United States. What we used to grasp technologically then was never under FISA, he has said, because we take it technologically now in a different way. We shouldn't change it, because if we do that, it does not allow us to respond.

And why are we here? He has said openly, and it has appeared in print, because the chatter has increased to levels that are so serious, we need to act now.

Please, please don't deny what he has suggested to us. Let us pass a proper bill that can be effective.

Mr. CONYERS. Madam Speaker, I am pleased to now yield 1 minute to the distinguished member of the Judiciary, Mr. ADAM SCHIFF.

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

There really is a lot of common ground in this debate. My friends on the minority side of the aisle want to make sure that when one foreigner is talking to another on foreign soil, that doesn't need to go through a FISA court, and we agree.

The only real area of disagreement is when we make an effort to surveil a foreign suspect, and whether inadvertently or advertently we capture the conversations of Americans, should there be court supervision. If the programs expand and, in fact, we capture the conversations of thousands of Americans, should there be some court oversight of that?

I think on a bipartisan basis the Members of this body feel there should be. The courts should be involved, the Congress should be involved when we are talking about the surveillance of Americans on American soil, whether they were the target or the incidental effect of that surveillance. And I also think that if we got three Members from our side of the aisle and three Members from yours and sat down with the admiral, in about an hour, we could hammer this out.

We ought to do supervision when Americans are surveilled. This bill provides that, and I urge its passage.

Mr. SMITH of Texas. Madam Speaker, I yield 1 minute to the gentleman from California (Mr. HUNTER), a former chairman of the Armed Services Committee and now ranking member of the Armed Services Committee.

Mr. HUNTER. Madam Speaker, I thank the gentleman for yielding.

Let me just say that I have examined and analyzed a number of battlefield situations and that this bill does not take care of a problem that we have with respect to accessing communications in time to take action in a meaningful way. Whether the insurgents are making a strike, moving people, moving equipment, moving hostages, those first few hours are what you might analogize as the golden hours, the time when you can make a difference. And right now we have a substantial delay on the battlefield that could have been fixed with this bill. It is not fixed with this bill, and I am deeply disappointed because of that. And I hope, my colleagues, that we can fix this in the near future.

Mr. SMITH of Texas. Madam Speaker, I yield 2 minutes to the gentleman from Michigan (Mr. ROGERS), who is also a member of the Intelligence Committee.

Mr. ROGERS of Michigan. Madam Speaker, I was an FBI agent and I worked organized crime in Chicago, and I did criminal title III work, which is equivalent to FISA on the intelligence side. I developed the sources. I did the debriefings. I did the surveillances. I did the interviews. I talked to lawyers. I talked to more lawyers. It is a very high standard to gain probable cause to listen to United States citizens' conversations. And it should be, and we should protect it. It should be that hard.

But I am going to tell you what we are going to do with this bill today. We are going to make it harder for us to go after terrorists who are trying to kill Americans than it was for me to go after organized criminals in Chicago. That is wrong.

And I think the intentions are right, but we did take the time to read the bill that we got this afternoon. There are some real problems with the language in here.

Number one is this whole thing was established so that we could be technology neutral. And I am just going to address the first paragraph. I think others are going to talk about other things. Because often you are referring to section 105 where it says a court order is not required for those who are not located in the United States. But if you read that whole paragraph, it's not technology neutral. You have set the bar beyond what our technology will be allowed in order to comply with the law.

It shouldn't matter if a terrorist is calling a terrorist from Pakistan to Saudi Arabia. We shouldn't care how or what technology they use. It should not matter. If what you say that you don't care that foreign terrorists who

are talking to foreign terrorists, that we should not have to have a warrant, this language is wrong. It's wrong. And the people who have to follow the law tell us it's wrong.

If you honestly believe this, then let's sit down. The gentleman from California was right. In about an hour we could have this worked out. Everybody would be happy, and we could protect the citizens of the United States, not only their civil liberties at home but from the terrorists who are today planning attacks against the United States.

And we all know in a classified way the fact that this is not fixed has cost American lives.

No more screwing around. Let's sit down. Let's work it out. Let's get this right.

Mr. CONYERS. Madam Speaker, I yield myself 30 seconds.

I want to relieve the tensions of my friend from Michigan. Foreign to foreign does not require a warrant. I don't know how many times I am going to have to say that. Foreign to foreign does not require a warrant.

The second thing that will make you much happier than you are now: Basket warrants authorized by the court make it easier to get warrants, not harder, Mr. ROGERS.

Madam Speaker, I am happy to yield 1 minute to JANE HARMAN from California, the former ranking member on the Intelligence Committee for many years.

Ms. HARMAN. Madam Speaker, I thank the gentleman for yielding.

Madam Speaker, only a few of us in this House are fully briefed on the terrorist surveillance program. It gives those who implement it incredible tools to find people who would harm us or to engage in unprecedented violations of Americans' constitutional rights for improper political or ideological reasons.

Most of this bill is not in dispute. But the key disagreement is whether a foreign surveillance program with unprecedented reach into the personal communications of terrorists or innocent Americans should be subject to supervision by an article III court. As you have just heard, that review comes in the form of a single warrant approving the contours of the program, called a "basket warrant." Our bill permits time to get that warrant while engaging in surveillance.

So a vote for our bill is a vote for sophisticated surveillance tools needed to catch terrorists and a vote to assure that those tools are not abused. I urge its bipartisan support.

Mr. SMITH of Texas. Madam Speaker, I yield 3 minutes to the gentlewoman from New Mexico (Mrs. WILSON), a member of the Intelligence Committee.

Mrs. WILSON of New Mexico. Madam Speaker, the Director of National Intelligence came to the Congress in April and told us that we were not listening to things we needed to be listen-

ing to, that we had a problem. And since then we have had numerous hearings, most of them in closed session, about the scope and scale of this problem. And it is worse than we ever thought it was. And, Ms. HARMAN, I would tell you it is much worse than when you served on the committee.

He said, in open session in the Senate Select Committee on Intelligence, "We are missing a significant portion of what we should be getting."

It is imperative that we solve this problem before we leave here.

This morning without any agreement, without any prior discussion, the Democrats' leadership introduced the bill we are considering tonight. There is no agreement on the text with Republicans in the House; there is no agreement with the Senate, Democrat or Republican; and there is no agreement with the Director of National Intelligence or with the President. In fact, the Director of National Intelligence had not seen the bill until after we were discussing the rule here on the floor.

I rise today to oppose this legislation. I must oppose it because it doesn't solve the problem that we must solve. And, in fact, it makes it worse.

The Director of National Intelligence told us this afternoon in writing that "The House proposal is unacceptable and I strongly oppose it." He also said, "The House proposal would not allow me to carry out my responsibility to provide warning and to protect the Nation."

This bill will not allow our Director of National Intelligence, who has 40 years of experience in this field, the former Director of the National Security Agency under President Clinton, it would not allow him to carry out his duties to protect this Nation. We are going in the wrong direction.

□ 2000

I would urge my colleagues to reject this bill before us tonight; and I would urge the Speaker, Ms. PELOSI, to bring another bill to the floor of this House that can be supported by the Senate, by the Republicans, by the Democrats and by our intelligence community and signed by the President so we can close this intelligence gap.

But what does it matter? Why should people care? We all remember where we were the morning of 9/11 and who we were with, what we were wearing, who we called first, who we checked on. You never remember the crisis that doesn't happen because it's prevented by good intelligence.

Mr. REYES. Madam Speaker, it is my privilege to yield 3 minutes to the gentlewoman from California (Ms. ESHOO).

Ms. ESHOO. I thank our distinguished chairman of the House Intelligence Committee.

I have listened very, very intently to the discussion on the floor this evening, as well as the news programs that have covered the debate about the

Foreign Intelligence Surveillance Act, as well as participated in the many, many hearings and discussions at the House Intelligence Committee as a member of that committee and feel very privileged to have done so.

I can't help but think of those whose shoulders we stand on, our predecessors in the House of Representatives in the Congress of over 200 years. Would any of them, would any of them for a moment accuse another Member of not wanting to fully protect the Nation that we are sworn to protect and the Constitution that we are sworn to uphold? That's what this debate is about.

The Foreign Intelligence Surveillance Act was born in 1978. And the reason our predecessors, Republicans and Democrats, set down this law was because of the abuses of those high in our government at that time, Richard Nixon. And Republicans and Democrats in the Congress as well as Republican and Democratic Presidents have honored the law, but they have also seen fit to change it, from 1978 on, to fit the needs of this great Nation.

And so to talk about blood on someone's hands, that there are some that do not love and want to protect this country does not deserve to be debated or even stated in this House. We all take the same oath. We all take the same oath. And when we take that oath, we say "to defend the Constitution of the United States." That is the steel of our Nation. The flag that is behind us is the heart of our Nation, but the Constitution is the soul of our Nation.

And so, in all of this we say "rule of law." This is not to cheapen FISA. This is not, as the ranking member of the Intelligence Committee, making fun of attorneys and saying we're sending it off to people that are going to quibble. We are talking about the rule of law.

The Democratic leadership last night gave the principles to the DNI, Director of National Intelligence, last night. Something happened after that, and it's not satisfactory. But we will not turn over to an Attorney General who has misled the Congress, who has now made a hospital visit famous, who came to the Hill and lobbied for torture, we are not going to give over what we believe should dictate all of this, and that is the rule of law.

Mr. SMITH of Texas. Madam Speaker, I am pleased to yield 1 minute to the gentleman from New York (Mr. MCHUGH), who is also a member of the Intelligence Committee.

Mr. MCHUGH. I thank the gentleman.

Madam Speaker, I hadn't intended to speak; and I didn't intend to because, right now, the hearts and minds of the 10th Mountain Division family, which includes the district that I represent, are focused on two soldiers who are classified as "missing, captured." And there has been speculation in the press recently whether or not FISA had some application, and I didn't want to cloud

that water. But I thought that those soldiers, whatever the circumstances may be related to their condition, would want us to do everything that we could to defend what they fought for, that is, the future, the ability of this country to prosper as the greatest democracy the world has ever known.

I have been listening to the chairman of the Intelligence Committee, a friend of mine, a gentleman and a leader, who said, "This bill gives most of those things that the DNI wanted." I listened to my friend, JERRY NADLER, the gentleman from New York, a colleague of mine in both the State legislature and here: "Most of." This is not a "most of" situation, Madam Speaker. This is a situation where we have to give what the war fighters need to protect them in the field.

Mr. CONYERS. Madam Speaker, I am pleased now to recognize the chairman of the Crime Subcommittee on Judiciary, the distinguished gentleman from Virginia, BOBBY SCOTT, for 1 minute.

Mr. SCOTT of Virginia. Madam Speaker, it would be better to consider complicated wiretap laws in the process with committee consideration, public hearings, markups, and consider amendments with more than just 1 minute of discussion, but we have been told that there is an urgent need for clarification in the wiretap law.

Now, all of those clarifications are in this bill, especially the foreign-to-foreign communications. This bill honors our Constitution and provides the government all of the flexibility that we were told was needed, but it does not leave the decision of when wiretaps are allowed to the imagination of this Attorney General.

The secret FISA court is appropriately involved. It does not restrict the ability of law enforcement to engage in appropriate surveillance, but it does respect our Constitution. We should adopt this very limited clarification in the law.

Mr. SMITH of Texas. Madam Speaker, once again, may I inquire as to how much time is remaining on each side?

The SPEAKER pro tempore. The gentleman from Texas has 2 minutes; the gentleman from Texas has 1 minute; the gentleman from Michigan has 1 minute, 5 seconds.

Mr. SMITH of Texas. Madam Speaker, I yield the balance of my time to the distinguished gentleman from Michigan (Mr. HOEKSTRA), who is also the ranking member of the Intelligence Committee.

Mr. HOEKSTRA. I thank the gentleman for yielding.

The great track record about the FISA bill designed and passed in 1978 was that the intent was to protect American civil liberties, and it has done a very effective job of protecting American civil liberties.

Nowhere in this debate over the last week, over the last number of months has about there been allegations that FISA did not work. There was a technical problem with FISA because tech-

nology has moved and evolved and the law did not. So the question becomes, take a look at the bill. If we're really intent on protecting Americans, read some sections of the bill.

"We require basket warrants for various targets, various countries." How many baskets are we going to put out there and are we going to require the DNI to prepare to bring to the court?

And then take a look at what they require to put into the basket. Does this help protect Americans, where we say the DNI needs to go to a court and provide a description of the nature of the information sought for the various baskets, the China basket, the North Korea basket, the al Qaeda basket, the Syria basket?

What happens if we outline the type of intelligence we want to gather and we're gathering it and we get something else? Do we need to minimize that? That is a ridiculous requirement.

The bill goes on and it says, "a statement of the means by which the electronic surveillance will be effected." This is going to the Court and saying, you need to identify all over the world how you are going to collect intelligence. There are certain intelligence collection methods that only two Members of this House may be aware of. Does that help keep America safe?

This is a bad bill. It protects terrorists, not Americans.

Mr. REYES. Madam Speaker, it is now my privilege to yield the remaining time to the distinguished majority leader from Maryland (Mr. HOYER).

Mr. HOYER. I thank the gentleman for yielding.

As has been stated on this floor, this is an extraordinary and important development and even more important issue.

I want to comment first on the involvement of Mr. REYES, Mr. CONYERS, myself, the Speaker, and others. I have met on at least three occasions with my friend, Mr. BLUNT. Every time we made a draft, I took it to him and discussed it with him. This was not something that I thought ought to be done on a partisan basis.

I talked to the Director of National Intelligence on at least five different occasions individually and then in a conference call with Senator ROCKEFELLER and Senator LEVIN, Mr. REYES, Mr. REID, the Speaker and myself. We talked over a number of hours. The conversation did not last hours. From time to time, we hung up and the DNI went to contact people.

Mr. Speaker, we have spent a substantial amount of time trying to reach what our Founding Fathers wanted us to reach, and that was a balance of power, a balance of making sure that our country was secure and making sure that our individuals were secure. That's what our Founding Fathers were all about. They didn't want King George knocking on the door and coming in just because he wanted to come in. They thought that King George needed to be restrained. So

they set up a separation of powers, they set up a judiciary and they set up a Constitution, and 10 amendments thereafter.

Mr. Speaker, our highest duty, as Members of this body, is to defend our Nation, protect our people and uphold the Constitution of the United States, as we've talked about. And one has to be thoughtful in doing that because, at times, it would appear that those three duties may be in conflict with one another. It is our job to harmonize those to accomplish all three objectives. That is, we have a duty to keep this Nation safe from those who seek to harm us.

And let there be no doubt, there are terrorists who seek to harm us. They have harmed us. They are people that we need to stop. They are people that we need to identify. They are people whom we need to act against. And, yes, a duty to ensure that our government abides by the principles upon which it was founded.

In 1978, as has been said, this Congress enacted the Foreign Intelligence Surveillance Act in an effort to balance these critical interests. It is with these principles in mind that we bring this bill to the floor to immediately fill the intelligence gap described to Congress by the Director of National Intelligence.

Among other things, this legislation clarifies that no court order is required, as has been said over and over and over again, to intercept and conduct surveillance on foreign-to-foreign communications that pass through the United States. That's a new technological reality, because that switch is here and so we needed to accommodate that.

The Director of National Intelligence discussed that with us. We made a change in the legislation that was proposed to accommodate that, and he was positive with respect to that change. I do not say he supported that change; I say he was positive.

It reiterates that individual warrants based on probable cause are required when surveillance is directed at people within the United States, not incidental contacts but directed at people in the United States.

It provides for an initial 15-day emergency authority so that international surveillance may begin immediately, so that we can empower the DNI to act now, and it allows for up to two 15-day extensions while the court considers the approval of surveillance procedures.

□ 2015

No one should be surprised that this majority is concerned about the actions of the administration after the last 4 years. The courts have been concerned. And the courts have acted because they did not believe that the administration was acting consistently with the duty to uphold and protect the laws and Constitution of this country.

That ought to be a serious concern. Frankly, it ought to be a very serious concern for those who label themselves conservatives, who have historically been the most outspoken in their fear of Government exercise of power and their concern for the constraint on the use of that power.

Our legislation also compels the cooperation of communications carriers during emergency periods, while it extends liability protection to those who assist in this intelligence-gathering effort. This was a very important provision. We understood that. It is controversial. But we thought it was important.

The legislation also requires the Inspector General of the Department of Justice to conduct an audit every 60 days of communications involving Americans that are intercepted under "basket warrants," because we know those basket warrants are going to be just that, broad-reaching, because we wanted to give the DNI the authority to reach broadly and not be slowed down bureaucratically by individual requests. But we also thought that we needed to protect those individuals with an aftercheck, if you will, by the Inspector General. We think that is fair. We think conservatives ought to be for that. We think liberals ought to be for that. We think the American people are for that.

Finally, the legislation provides that these provisions sunset in 120 days, because it is imperative that we consider issues of this magnitude in a thoughtful manner.

We have been working hard. I said how often I have talked to the DNI, how often I have been in meetings, and how recently I was in meetings with the DNI. It is imperative that we consider these issues consistent with the magnitude that they present, not only for the safety of our people, but for the integrity of our Constitution and laws.

Now, some will say this bill doesn't go far enough. That may be so. And we ought to thoughtfully consider that in the months ahead as the committee, the ranking member, Republicans and Democrats, consider the permanent laws that may be put in place.

Many of them support the administration's proposal, which would permanently authorize warrantless surveillance and searches of American's telephone calls, e-mails, homes, offices and personal records for at least 3 months and for however long an appeal to the Court of Review in the Supreme Court takes, as long as the search is, and I quote, "concerning a person abroad."

In fact, the administration's proposal practically eliminates the role of the FISA court. That, of course, is the administration's intent. We understand that. The administration, in fact, undertook the TSP program, the Terrorist Surveillance Program, outside the ambit of the check and balance that we contemplated when we adopted the legislation.

Madam Speaker, we have spent hours with the Director of National Intel-

ligence and worked hard to give him the tools that were requested. The DNI asked that we expand the language in the bill from "relating to terrorism" to the much broader "relating to all foreign intelligence." I support that change. I want to make sure that the DNI has a broad reach and view. So that is in this bill.

The DNI asked that we eliminate the requirement that the FISA court adjudicate how recurring communications into the United States from foreign targets would be handled, and we agreed to that change.

Madam Speaker, in closing, let me tell the Members that yesterday in that conference call I asked the Director of National Intelligence, Admiral McConnell, this question: Does this legislation improve or not the situation you find yourself in? I quote you his answer to me just about 24 hours ago. This legislation, which has been so harshly analyzed, I quote the Director of National Intelligence: "It significantly enhances America's security."

That is a quote. It is a direct quote. I do not imply that he said he supported it. And we have a very harsh statement from him that we just got a few hours ago. I will tell you, it doesn't sound like the Admiral McConnell with whom I have talked over the past few weeks.

Madam Speaker, the administration truly seeks a temporary fix to the FISA statute. This legislation provides one.

Madam Speaker, I urge my colleagues on both sides of the aisle to vote for this important legislation. There are some on my side who believe it goes too far. There are some on your side that believe it goes not far enough. But it is, I suggest to you, a compromise that we can make that, as in the words of the Director of National Intelligence, significantly enhances our national security.

Madam Speaker, I urge the support of this legislation.

Mr. CONYERS. Madam Speaker, I am pleased now to yield 30 seconds to the gentlewoman from California (Ms. PELOSI), the honorable Speaker of the House.

Ms. PELOSI. Madam Speaker, I thank the gentleman for yielding. I thank him for championing civil liberties in our country for such a long, long time. I want to express my admiration and respect for you, Mr. CONYERS, as the distinguished Chair of the Judiciary Committee. And to the distinguished Chair of the House Intelligence Committee, Mr. REYES, congratulations to you for this excellent work. It is difficult, because we have to balance security and liberty. Two great patriots have brought this bill to the floor. Mr. REYES, you have served our country in many capacities to secure our country, and you are doing so in your capacity as Chair of the Intelligence Committee.

Madam Speaker, in my service in Congress I have had the privilege of

-serving on the Intelligence Committee longer than anyone, 10 years as a member directly and now my fifth year ex officio as leader and now Speaker of the House.

I considered it a service to our country that was important to our national security. I salute the men and women who serve our country in the intelligence community for their bravery and for their patriotism.

Congress has always for many years had a special interest in intelligence. We all recognize that we want our President and our policymakers to have the best possible intelligence. We want to do so in a way, though, that again balances liberty and security. We want to use every tool at our disposal to collect the intelligence that we need, again, to protect the American people, but we must do so under the law. That is what we are talking about here tonight.

In 1978, it was recognized that Congress had a role, the checks and balances, in determining how our intelligence was collected, analyzed and disseminated. Those are the three aspects of intelligence. Tonight, we are talking largely about collection.

In 1978, when the FISA law was passed, we were in a different era. It is clear that as it established Congress' rights in this arena and the checks and balances necessary to protect the American people, we also have to recognize today that technology is vastly different than it was at that time. So Congress has always stood willing, in a bipartisan way, to make amendments to the FISA act that would reflect the change in technology.

If anything in what we do should be nonpartisan, it is intelligence. It should be analyzed in a way that has no political approach to it, and the laws governing it should be written in a nonpartisan way.

That is why so many of us worked so closely, the distinguished Chairs of the committees of jurisdiction, Judiciary and Intelligence, including the majority leader, who just spoke, we worked closely with the Senate leadership, with the administration, trying to work in a bipartisan way to meet the needs of the American people.

As Mr. HOYER indicated, and I won't go into it in detail, this involved a series of communications, both in person, on the telephone and otherwise, with the Director of National Intelligence. He presented to us, as I believe Congresswoman HARMAN has indicated and the chairmen have indicated, he presented us his three must-have provisions in the FISA law, and we wrote a bill that reflected, in fact echoed, the request of the Director of National Security.

When we sent that to him, he came back and said, I have additional changes that I am requesting, and we accommodated them as far as we could under the balance of liberty and security.

As Mr. HOYER said, when we asked in the presence of the majority leader in

the Senate, the Speaker of the House, the Chairs of the intelligence committees, House and Senate, and Armed Services from the Senate, the Director of DNI, that group of people gathered said that our bill would make us significantly safer. It was a positive contribution, as the leader said. Not that he endorsed the bill, because by then the administration had a different approach.

It made it seem for some time, why we were going back and forth with this, trying to accommodate the DNI. I know that he was negotiating in good faith. I hope that he will accept what we are proposing in that same good faith.

Some of the things that have been rejected since those conversations, but I hope will reappear in the Senate bill, are to diminish the role of the Attorney General in the decision-making on this. We have always said that there would be a third branch of government, the courts, to issue the warrants. The discretion in this situation is now given to the Attorney General.

Without any reference to the current Attorney General, and there will be some who might question his judgment, I don't want Alberto Gonzales to have this much power, but in a Democratic administration, I would not want that Attorney General to have this much power. It should be a different branch of government.

So we have seen them come up with these pieces of legislation that substitute the Attorney General for the FISA courts. It is just totally unacceptable.

While we are trying to address the emergency concerns of the Director of National Intelligence, we know we will have a bigger bill down the road to go into some other issues of concern, but without the same urgency. That is why this legislation must be sunsetted, because no matter how you look at it, it gives extraordinary power to the administration beyond the intent of the FISA law, and certainly outside the values of our Founding Fathers, to balance liberty and security.

Having made the changes to our proposal that respond to each of the Director's concerns and having him describe our proposal as a significant improvement in his current capabilities, I would have expected that he would be leading the charge for this bill's passage.

□ 2030

That is not happening, but that does not mean that this bill is inadequate. The judgment of the Director of National Intelligence stands. He knew to whom he was speaking that evening, and he was clear in his assessment.

All of us in Congress want to do everything within our power to protect the American people from terrorism. As I say, as a 15-year member of the Intelligence Committee, both as a member and ex officio, I know full well and sadly the threats to our country. I

know full well the capabilities that we have and some that we need. Every person, as Congresswoman HARMAN said, every person in this body is fully committed, is fully committed to collecting the intelligence that we need to protect the American people. But we must do it under the law, and sometimes that's where we differ.

You will hear our colleagues stand on this floor and say, terrorist to terrorist in foreign lands, the Democrats don't want you to collect on them; and they want to make you have a warrant to do it.

When I hear my colleagues say that, I think either they don't know or they don't care about the truth. Because that is patently untrue. And it has always been a mystery to me about this House of Representatives that somebody can misrepresent the facts, some would call, I don't like the word "lie," but if you said they were lying, your words would be taken down. And yet misrepresentations about the intentions of Members of this body are being made here tonight that simply are not true.

So let's put that aside and talk about how we can work together to honor the needs of our people, to recognize the changes in technology and to honor the oath of office that we take here to protect and defend the Constitution of the United States as we protect and defend the American people.

I urge a "yes" vote on this important legislation.

Mr. CONYERS. Madam Speaker, it is my pleasure to yield the remaining time that I have to the gentlewoman from Texas (Ms. JACKSON-LEE).

The SPEAKER pro tempore. The gentlewoman from Texas is recognized for 30 seconds.

Ms. JACKSON-LEE of Texas. Madam Speaker, I have listened to the debate this afternoon and I only have these few words of a message. One great patriot said, "Give me liberty or give me death."

I want to say to this body, the majority that I happen to be a part of will never endanger the American people. We have given to the DNI what he has asked for, but, most importantly, we have given to the American people their liberty, and we now give them their life. We protect them. Terrorists will not get away from us. This bill will protect the American people. I ask my colleagues to vote for this bill.

Madam Speaker, I rise today in strong support of H.R. 3356, the Improving Foreign Intelligence Surveillance to Defend our Nation and Our Constitution Act. I would like to thank my colleagues Mr. REYES and Mr. CONYERS for their leadership on this important issue.

This important legislation addresses the intelligence gap identified by Director of National Intelligence Mike McConnell, by amending the Foreign Intelligence Surveillance Act, or FISA. Madam Speaker, FISA has served the nation well for nearly 30 years, placing electronic surveillance inside the United States for foreign intelligence and counter-intelligence purposes on a sound legal footing.

This legislation contains a number of crucial provisions. It clarifies that no court order is required for foreign-to-foreign communications that pass through the United States. It reiterates that individual warrants, based on probable cause, are required when surveillance is directed at people in the United States. This legislation requires the Attorney General to submit procedures for international surveillance to the Foreign Intelligence Surveillance Court for approval, and it allows the Court to issue a "basket warrant" without requiring the Court to make individual determinations about foreign surveillance. It provides for an initial 15-day emergency authority so that international surveillance can begin while the "basket warrant" is submitted to the Court. It allows for congressional oversight, requiring the Department of Justice Inspector General to conduct an audit every 60 days of U.S. person communications intercepted under the "basket warrant," to be submitted to the Intelligence and Judiciary Committees. Finally, this is a short-term legislative fix, sunseting in 120 days.

In terms of the President's warrantless surveillance programs, there is still nothing on the public record about the nature and effectiveness of those programs to indicate that they require a legislative response, other than to reaffirm the exclusivity of FISA and insist that it be followed. This is accomplished by H.R. 5371, the "Lawful Intelligence and Surveillance of Terrorists in an Emergency by NSA Act, LISTEN Act," which I have co-sponsored last Congress with the Ranking Members of the Judiciary and Intelligence Committees, Mr. CONYERS and Ms. HARMAN.

There is still nothing on the public record about the nature and effectiveness of the President's warrantless surveillance programs to indicate that they require a legislative response, other than to reaffirm the exclusivity of FISA and insist that it be followed. This could have been accomplished last Congress by H.R. 5371, the "Lawful Intelligence and Surveillance of Terrorists in an Emergency by NSA Act" (LISTEN Act)," which I was proud to have cosponsored last Congress with the then-Ranking Members of the Judiciary and Intelligence Committees, Mr. CONYERS and Ms. HARMAN.

The Bush administration has not complied with its legal obligation under the National Security Act of 1947 to keep the Intelligence Committees "fully and currently informed" of U.S. intelligence activities. Congress cannot continue to rely on incomplete information from the Bush administration or revelations in the media. It must conduct a full and complete inquiry into electronic surveillance in the United States and related domestic activities of the NSA, both those that occur within FISA and those that occur outside FISA.

The inquiry must not be limited to the legal questions. It must include the operational details of each program of intelligence surveillance within the United States, including: (1) who the NSA is targeting; (2) how it identifies its targets; (3) the information the program collects and disseminates; and most important; (4) whether the program advances national security interests without unduly compromising the privacy rights of the American people. Given the unprecedented amount of information Americans now transmit electronically and the post-9/11 loosening of regulations governing information sharing, the risk of inter-

cepting and disseminating the communications of ordinary Americans is vastly increased, requiring more precise—not looser—standards, closer oversight, new mechanisms for minimization, and limits on retention of inadvertently intercepted communications.

Madam Speaker, this temporary legislative fix addresses the gap identified by Director McConnell. The Majority of both the House and the Senate have set aside partisan differences to work for the security of our Nation. We must ensure that our intelligence professionals have the tools that they need to protect our Nation, while also safeguarding the rights of law-abiding Americans. This is important legislation, and I strongly encourage my colleagues to join me in supporting it.

Mr. LANGEVIN. Madam Speaker, I rise in support of the bill. Despite the claims of those who support the Administration, this measure does nothing to protect those overseas who intend to do us harm. Instead, it is an important and vital effort to clarify the role of the FISA Court in light of advances in communications technology. As every member of the intelligence committee knows, the FISA Court already supervises aspects of foreign intelligence collection. The bill keeps the FISA Court engaged at the programmatic level, while ensuring that the Administration does not need individual warrants for foreign targets.

The administration's proposal would cut the court out of the process and let the Attorney General decide when American's liberties are infringed. Our legislation establishes meaningful, independent judicial oversight by the FISA Court. It protects America without sacrificing our civil liberties.

Our legislation is the responsible course, and I urge a YES vote.

Mr. FRELINGHUYSEN. Madam Speaker, I rise in opposition to this legislation—H.R. 3356.

The Global War on Terrorism—the Long War—is the first conflict of the information age. With our technical assets and expertise, the United States is far better at gathering information than our enemies. This is an advantage we must exploit each and every hour of the day to better protect the American people from terrorists who are plotting against us at this very moment. We must never lose that technological edge!

Last year, this House passed the Electronic Surveillance Act seeking to update the Foreign Intelligence Act (FISA) of 1978. That bill took into account 21st century technological developments which enable our intelligence agencies to spy on terrorists who may be planning the next attack.

For example, the current FISA law (1978) covers only "wire" and "radio" communications. FISA is a pre-internet, pre-cell phone law. It's a living anachronism! A dinosaur.

That reform bill never became law and since that time various developments have further eroded our intelligence capabilities.

The wording of the outdated FISA law and a court ruling earlier this year prevents our counterintelligence people from listening in on terrorists overseas if that communication is somehow routed thru "nodes" in the United States.

In our effort to "connect-the-dots" to prevent the next attack, this is a huge problem! The Director of National Intelligence has stated unequivocally that we continue to miss significant

amounts of information that we should be collecting.

Simply put—we should be fully protecting the American people, and we are not.

The Democratic Leadership has known about these failures and has failed to act to correct them.

Madam Speaker, it is critically important that this Congress immediately reform the FISA.

Intelligence is our first line of defense against terrorists. Good intelligence can save American lives—our soldiers in the war zones and our fellow citizens here at home.

During this summer of heightened threat warnings, there is no more important priority for this Congress today than to modernize FISA—fully and completely.

The lives of our constituents depend on it. Unfortunately, H.R. 3356 falls short in several specific areas and actually erects new burdens for our counterintelligence personnel as they work to keep Americans safe.

It is opposed by the Director of National Intelligence.

I, too, oppose this legislation.

Mr. WILSON of South Carolina. Madam Speaker, we are debating critical legislation that would update the Foreign Intelligence Surveillance Act (FISA). This law must be updated to allow American agencies to listen to foreigners in foreign countries without a warrant. Like many of my colleagues, I believe that this is crucial to our national security. We must remain on the offense, and updating FISA will help us prevent future terrorist attacks.

Just yesterday, the Director of National Intelligence issued a statement urging Congress to make changes to FISA so we may protect American families. He said, "We must urgently close the gap in our current ability to effectively collect foreign intelligence. The current FISA law does not allow us to be effective. Modernizing this law is essential for the intelligence community to be able to provide warning of threats to the country."

Congress must act immediately to ensure that our intelligence community can do their job successfully. They should not be forced to obtain court orders that hinder them from learning of terrorist threats. We must ensure that those who help our Government and report suspicious activity are protected. I urge my colleagues to act now and help keep your constituents and our country safe from impending terrorist attacks.

I have said many times on the floor of the House of Representatives that I have not forgotten September 11th. I urge my colleagues to act now to protect American families. We must face our enemies overseas so we do not have to face them here at home. Let's enact commonsense real reform that gives our intelligence officers the tools they need to effectively protect us.

Mr. TIAHRT. Madam Speaker, I am extremely concerned about our national security and deeply troubled that our intelligence community has been prevented from doing the job they need to protect Americans. For that reason I strongly oppose H.R. 3356 as it will only further tie the hands of our intelligence community.

The latest National Intelligence Estimate (NIE) clearly states that we are at risk of an attack. We have all read the reports this week about the very real concerns that our enemies intend to attack the in the next month or so.

Police forces in the nation's capital have beefed up security in response to these perceived threats. But without good intelligence, they will not know when or how we may be attacked—never mind having a chance to thwart any plots. Due to Democrat undermining of our intelligence of our intelligence community and our military for the past couple of years—through leaks and political games—we are less prepared to uncover terrorist plots and prevent such attacks.

We need to fix the Foreign Intelligence Surveillance Act (FISA) so that the intelligence community can do its job. The American people know we need to fix the loopholes in FISA implementation that allow terrorists to bypass our intelligence capabilities. For several months Administration and Republican Leadership have repeatedly asked the Democrats to address this problem, and they have ignored these requests.

As a member of the House Permanent Select Committee on Intelligence I have been very disturbed by what I have seen this past year. The vitriol that Members on the other side of the aisle have for the President has clouded their judgment. In an effort to embarrass him, they have weakened our intelligence gathering capabilities and caused long term damage to the security of this nation. We do not monitor phone conversations, emails or finances of suspected terrorists and terrorist allies as we used to and the enemy knows it. It is time for us to strengthen, not weaken, terrorist surveillance.

Unfortunately this bill does not address the needs of the intelligence community. The Director of National Intelligence Mike McConnell is strongly opposed to this bill:

I have reviewed the proposal that the House of Representatives is expected to vote on this afternoon to modify the Foreign Intelligence Surveillance Act. The House proposal is unacceptable, and I strongly oppose it.

The House proposal would not allow me to carry out my responsibility to provide warning and to protect the Nation, especially in our heightened threat environment.

I urge Members of Congress to support the legislation I provided last evening to modify FISA and to equip our Intelligence Community with the tools we need to protect our Nation.

I trust the DNI far more than the Democrat leadership that has clearly chosen to put politics over security. I urge my colleagues to vote against this bill and encourage the majority to bring a true FISA reform bill before this body so that the intelligence community can have every tool at its disposal to protect the United States of America.

The SPEAKER pro tempore. The question is on the motion offered by the gentleman from Michigan (Mr. CONYERS) that the House suspend the rules and pass the bill, H.R. 3356.

The question was taken.

The SPEAKER pro tempore. In the opinion of the Chair, two-thirds being in the affirmative, the yeas have it.

Mr. SMITH of Texas. Madam Speaker, on that I demand the yeas and nays.

The yeas and nays were ordered.

The vote was taken by electronic device, and there were—yeas 218, nays 207, not voting 8, as follows:

[Roll No. 821]

YEAS—218

Abercrombie
Ackerman
Allen
Altmire
Andrews
Arcuri
Baca
Baird
Baldwin
Barrow
Bartlett (MD)
Bean
Becerra
Berkley
Berman
Berry
Bishop (GA)
Bishop (NY)
Boren
Boswell
Boucher
Boyd (FL)
Boyd (KS)
Brady (PA)
Braley (IA)
Brown, Corrine
Butterfield
Capps
Cardoza
Carnahan
Carney
Carson
Castor
Chandler
Clay
Cleaver
Clyburn
Cohen
Conyers
Cooper
Costa
Costello
Courtney
Cramer
Crowley
Cuellar
Cummings
Davis (AL)
Davis (CA)
Davis (IL)
Davis, Lincoln
DeFazio
DeGette
Delahunt
DeLauro
Dicks
Dingell
Doggett
Donnelly
Doyle
Edwards
Ellison
Ellsworth
Emanuel
Engel
Eshoo
Etheridge
Farr
Fattah
Frank (MA)
Giffords
Gilchrest
Gillibrand
Gonzalez

NAYS—207

Aderholt
Akin
Alexander
Bachmann
Bachus
Baker
Barrett (SC)
Barton (TX)
Biggart
Bilbray
Bilirakis
Bishop (UT)
Blackburn
Blumenauer
Blunt
Boehner
Bonner
Bono
Boozman
Boustany

Gordon
Green, Al
Green, Gene
Grijalva
Gutierrez
Hall (NY)
Hare
Harman
Hastings (FL)
Herseth Sandlin
Higgins
Hill
Hinchee
Hinojosa
Hirono
Hodes
Holden
Honda
Hooley
Hoyer
Israel
Jackson (IL)
Jackson-Lee (TX)
Jefferson
Johnson (GA)
Johnson, E. B.
Jones (NC)
Jones (OH)
Kagen
Kanjorski
Kaptur
Kennedy
Kildee
Kilpatrick
Kind
Klein (FL)
Lampson
Langevin
Lantos
Larsen (WA)
Larson (CT)
Lee
Levin
Lewis (GA)
Lipinski
Loebsack
Lofgren, Zoe
Lowey
Lynch
Mahoney (FL)
Maloney (NY)
Markey
Marshall
Matheson
Matsui
McCarthy (NY)
McCollum (MN)
McIntyre
McNerney
McNulty
Meek (FL)
Meeks (NY)
Melancon
Miller (NC)
Miller, George
Mitchell
Mollohan
Moore (KS)
Moore (WI)
Moran (VA)
Murphy (CT)
Murphy, Patrick
Murtha

Feeney
Ferguson
Filner
Flake
Forbes
Fortenberry
Fossella
Fox
Franks (AZ)
Frelinghuysen
Gallegly
Garrett (NJ)
Gerlach
Gillmor
Gingrey
Gohmert
Goode
Goodlatte
Granger
Graves
Hall (TX)
Hastert
Hastings (WA)
Heller
Hensarling
Herger
Hobson
Hoekstra
Holt
Hulshof
Hunter
Inglis (SC)
Inslee
Issa
Jindal
Johnson (IL)
Jordan
Keller
King (IA)
King (NY)
Kingston
Kirk
Kline (MN)
Knollenberg
Kucinich
Kuhl (NY)
Lamborn
Latham
LaTourette
Lewis (CA)

NOT VOTING—8

Clarke
Crenshaw
Davis, Jo Ann

Hayes
Johnson, Sam
LaHood

□ 2058

Paul
Waxman

Reynolds
Rogers (AL)
Rogers (KY)
Rogers (MI)
Rohrabacher
Ros-Lehtinen
Roskam
Royce
Ryan (WI)
Sali
Saxton
Schmidt
Sensenbrenner
Sessions
Shadegg
Shays
Shimkus
Shuster
Simpson
Smith (NE)
Smith (NJ)
Smith (TX)
Souder
Stark
Stearns
Sullivan
Tancredo
Terry
Thornberry
Tiahrt
Tiberi
Turner
Upton
Walberg
Walden (OR)
Petri
Walsh (NY)
Wamp
Waters
Welch (VT)
Weldon (FL)
Weller
Westmoreland
Whitfield
Wicker
Wilson (NM)
Wilson (SC)
Wolf
Woolsey
Young (AK)
Young (FL)

Mr. WELCH of Vermont and Mr. JOHNSON of Illinois changed their vote from "yea" to "nay."

Mr. WEINER changed his vote from "nay" to "yea."

No (two-thirds not being in the affirmative) the motion was rejected.

The result of the vote was announced as above recorded.

QUESTION OF THE PRIVILEGES OF THE HOUSE

Mr. BOEHNER. Madam Speaker, I have a privileged resolution at the desk.

The SPEAKER pro tempore. The Clerk will report the resolution.

The Clerk read as follows:

H. RES. 612

Whereas clause one of House rule XXIII (Code of Official Conduct) states, "A Member, Delegate, Resident Commissioner, officer or employee of the House shall conduct himself at all times in a manner that shall reflect creditably on the House,";

Whereas the House Ethics Manual states that, "The public has a right to expect Members, officers and employees to exercise impartial judgment in performing their duties" and "This Committee has cautioned all Members to avoid situations in which even an inference might be drawn suggesting improper action;