

priorities. And Democrats can help by keeping spending in these bills low from the start—and resisting the urge to lace them with poison pill social policy.

Working together to strengthen America at home also means increasing access and lowering the cost of good health care. We should empower individuals and protect the doctor-patient relationship by promoting research into new treatments and cures and by investing in new information technology like electronic medical records and e-prescribing. We can also increase access by letting small businesses pool resources to get the same deals from insurers big businesses do.

In the coming months, Americans will hear a lot of different health care proposals coming out of the campaigns. And while presidential election years are not typically the time when broad based reforms are achieved, we shouldn't let disputes among candidates or the failures of the past keep us from delivering something for Americans now. In the long term, Republicans are committed to the goal of every American having health insurance. But there is no reason we can't find bipartisan support this year for other common sense measures that remove barriers to access and increase coverage options.

We should also be able to agree that too many judicial posts have been left empty too long. Last year we confirmed 40 judges, including six circuit court nominees, and an attorney general. But we are not on pace to keep up with historical precedent. The historical average for circuit court confirmations in the last Congress of a divided government is 17. President Clinton—who had the second most judicial confirmations in history, despite having to deal with a Republican Senate almost his entire time in office—had 15 circuit court confirmations in his last Congress.

Clearly, we need to catch up. But we can not confirm judges if they don't get hearings. And since last summer, Democrats have allowed only one hearing since last summer, one hearing—since last summer, one hearing—on a circuit court nominee. Compare that with Senate Republicans in 1999, who held more hearings on President Clinton's nominees in the fall of that year alone than Democrats allowed this President all last year. This pattern is neither fair nor acceptable.

As we focus on crucial issues at home, we are reminded that our first responsibility is to keep Americans safe. For some, the passage of time has made 9/11 seem like a distant memory and the people behind it a distant threat. Yet the best argument in favor of our current strategy of staying on offense is the fact that not a single terrorist act has been carried out on American soil since that awful day.

We decided early on in this fight that the best strategy would be to fight the terrorists overseas so we wouldn't have

to fight them at home. This policy has worked. And we must continue to ensure that it does by giving those who protect us all the tools they need.

One of the most valuable tools we have had is the Foreign Intelligence Surveillance Act, which lets us monitor foreign terrorists overseas and react in real time to planned attacks. In August, we updated this protection. Yet with only 10 days to go before it expires, we need to pass new FISA legislation that allows the intelligence community to continue its work and which assures telecom companies they will not be sued for answering the call to help in the hunt for terrorists.

Some of our Democratic colleagues delayed consideration of this vital legislation at the end of the last session. And it should have been the first thing we turned to this session. American lives do not depend on whether we pass the Indian health bill by the end of the month.

We also need to renew our commitment to the brave men and women of the Armed Forces whose hard work over a number of years has helped change the story in Iraq in 2007. No issue should bring us together more readily than this one. Yet no issue threatens to divide us more as the November elections draw near. Let the candidates say what they will. The Senate should stand united in supporting the troops—and we can start by affirming that the Petraeus plan is working.

We could even go one step further by making a pledge that during the session that begins today, we will not attack the integrity of our uniformed officers or subvert the efforts of the troops—all of whom have made sacrifices for us equally, regardless of our political parties or theirs.

Beyond that, we should be able to agree that we need to invest in the future of our military. This remarkable volunteer force is built on the finest training, weaponry, and education system in the world. We need to support this great national resource not only to retain our strength for today's battles, but in preparation for the unexpected challenges that lie ahead—particularly in the Persian Gulf and in the Pacific, where our strategic interests will continue to be challenged for many years to come.

So we stand at the beginning of a new year. I, for one, am hopeful that it will be a year in which we accomplish much for the people who sent us here. We can start by agreeing to protect taxpayer wallets and by facing concerns about health care and the other economic pressures that so many American families face. We must act right away to keep our economy strong. And above all we can work together to keep America and its interests safe both at home and overseas.

We can do all this—we can live up to our duties to work together on behalf of the American people—by learning from last year and working together.

Republicans are ready, we are eager, to do our part.

Mr. President, I yield the floor.

#### RESERVATION OF LEADER TIME

The PRESIDING OFFICER. Under the previous order, leadership time is reserved.

#### MORNING BUSINESS

The PRESIDING OFFICER. Under the previous order, there will now be a period for the transaction of morning business for 60 minutes, with Senators permitted to speak for up to 10 minutes each and the time equally divided and controlled between the two leaders or their designees, with the Republicans controlling the first half and the majority controlling the final half.

The Senator from Arizona.

#### WELCOMING ROGER WICKER

Mr. KYL. Mr. President, first, I join those who welcomed our new colleague, ROGER WICKER from Mississippi, to the Senate. I know he will serve his State and this Nation with distinction.

#### THE CHAPLAIN

Mr. KYL. Mr. President, I wish to mention and thank specifically our Chaplain, ADM Barry Black, for coming to Arizona this past weekend to join in celebrations relating to the Martin Luther King activities that occurred. After preaching three sermons and attending a couple other major events associated with Martin Luther King celebrations, Chaplain Black was right back here to open our session today. He certainly deserves our thanks and has my gratitude for joining us in Arizona.

#### FOREIGN INTELLIGENCE SURVEILLANCE ACT

Mr. KYL. Mr. President, I also wish to pick up on what our Republican leader has just been talking about: that we can, with bipartisanship, accomplish a great deal in this Senate and that there is no better place to start than on the Foreign Intelligence Surveillance Act. In the Senate, we refer to that by its acronym, FISA, but it needs to be our first important piece of business.

Certainly, our intelligence community, to whom we have given a very big responsibility, needs certainty with respect to its responsibilities and its rights. It needs permanency, not just 1-month extensions. This intelligence community must know the rules of the road. That is why it is so important for us to, within the next week or so, reauthorize the Foreign Intelligence Surveillance Act with a few additional changes to ensure that we can, in fact, collect this intelligence on our enemies.

Theodore Roosevelt once referred to his opportunities in life and said the greatest opportunity was work worth doing. And there is no more work worth doing than ensuring that we can gain the intelligence on the enemy that attacked us in this war.

We are at war, both at home and abroad. These radical militant Islamists have attacked us, and they continue to threaten us. We all know that the best approach to defeating them is good intelligence and that most of that intelligence, by necessity, is collected overseas—that is why it is called foreign intelligence—and that the basis for the collection of much of this intelligence is the FISA law, or the Foreign Intelligence Surveillance Act. As noted, that act expires next week, and that is why it is important for the Senate to act now and the reason this reauthorization is actually very simple and straightforward and very interesting.

Technology has actually outpaced the law. What we found is that we are now able to collect intelligence in ways that were never understood when the FISA law was first written nearly 30 years ago. As a result, we need to change that law to accommodate the intelligence collection capabilities we have today.

Before we changed the law last year, U.S. intelligence agencies had lost about two-thirds of their ability to collect communications intelligence against al-Qaida. Obviously, in this war, we cannot cede two-thirds of the battlefield to our enemy, to the terrorists.

When we enacted the Protect America Act last summer, we regained that capability to collect communications intelligence against al-Qaida by conforming the legal procedures to the technology that is available to us. Let there be no doubt that the collection of this information, as a result of that work, is critical to our Nation's security. In fact, in a New York Times op-ed on December 10, Michael McConnell, the Director of National Intelligence, noted that "[i]nformation obtained under this law has helped us develop a greater understanding of international Qaeda networks, and the law has allowed us to obtain significant insight into terrorist planning."

Similarly, on October 31 of this year, Kenneth Wainstein, the Assistant Attorney General in charge of the Justice Department's National Security Division, testified before the Judiciary Committee that "since the passage of the [Protect America] Act, the Intelligence Community has collected critical intelligence important to preventing terrorist actions and enhancing our national security."

This is important business. It is work worth doing.

The Intelligence Committee, in a very bipartisan way, crafted an extension of the foreign Intelligence Committee legislation.

The Judiciary Committee, on which I sit, took a much more partisan ap-

proach. The Judiciary Committee bill has a lot of flaws that the Intelligence Committee bill does not have. Let me mention a couple of those flaws, suggesting to my colleagues that the bill we should start with as our base bill is the Intelligence Committee bill, not the bill that came out of Judiciary Committee.

One of the things the Judiciary Committee bill does is it includes an "exclusive means" provision that would undermine intelligence gathering directed at foreign terrorist organizations. The provision not only uses vague terms whose mention is unclear, it also appears to preclude use of other intelligence-gathering tools that have already proven to be valuable sources of intelligence about al-Qaida.

As the official Statement of Administration Policy for this bill notes:

The exclusivity provision in the Judiciary Committee substitute ignores FISA's complexity and its interrelationship with other federal laws and, as a result, could operate to preclude the Intelligence Community from using current tools and authorities, or preclude Congress from acting quickly to give the Intelligence Community the tools it may need in the aftermath of a terrorist attack in the United States or in response to a grave threat to the national security.

Another serious flaw of the Judiciary Committee bill is it has a provision that would limit FISA overseas intelligence gathering—to quote the legislation itself—

... to communications to which at least one party is a specific individual target who is reasonably believed to be outside the United States.

The problem, of course, is it is not always possible to identify such a specific individual in our intelligence collection.

And finally let me respond generally to those who would dismiss or ignore the harm done to our national security by applying layer after layer of bureaucratic hurdles to foreign intelligence investigations. These restrictions, for example, that the Judiciary bill would impose, matter in our agents' ability to collect this intelligence. We know they can undermine critical investigations because we have seen it happen in the past, and let me cite an example that makes this point.

In the 1990s, the Justice Department determined—well, first of all, it imposed this infamous wall that segregated foreign intelligence and criminal investigations. It determined it was necessary to do this to protect constitutional rights, but it went well beyond what the FISA law itself required. These rules were created by individuals, and they prevented criminal and intelligence agents who were chasing after the same suspects from cooperating with each other, even sharing information with each other and with the other agents. So the FBI and the CIA had a very difficult time talking to each other. This was part of the criticism of the 9/11 Commission after that horrible event.

Well, a few years after this wall was built, in the summer of 2001—note the

date, summer 2001—an FBI agent in the Bureau's New York field office became aware that Khalid al-Mihdhar, Nawaf al-Hazmi, and two other bin Laden-related individuals were present in the United States. They were here. This agent knew these men had been at an important al-Qaida meeting in Kuala Lumpur, Malaysia, and instinctively understood they were dangerous. The agent initiated a search for these men and sought the help of criminal investigators who have much greater access to resources for finding people in the United States. This search was probably the best chance the United States had of disrupting or potentially stopping the September 11 attacks.

This FBI agent was literally on the trail of the 9/11 hijackers in the summer of 2001. But what happened when the agent sought to enlist the help of criminal investigators and the full resources of the FBI? Well, the agent ran into this legal wall separating criminal and intelligence investigations, and he was repeatedly told criminal investigators could not aid in the investigation. Finally, after being repeatedly rebuffed in requests for assistance in searching for Khalid al-Mihdhar and the other hijackers, the agent sent the following, disturbingly prophetic, e-mail to FBI headquarters in August 2001. August 2001.

Whatever has happened to this, someday someone will die and, wall or not, the public will not understand why we were not more effective in throwing every resource we had at certain problems.

Well, the officials who created the intelligence investigation wall in the 1990s, and who thereby undercut the search for al-Mihdhar and the other hijackers, at least had one excuse. In the summer of 2001, few people appreciated the threat the Nation faced from al-Qaida. Few realized how devastating an al-Qaida terrorist attack could be and how many innocent people could be killed.

Today we have no such excuses. We have already suffered one horrific al-Qaida attack, and we know much worse attacks are possible. We now know what is at stake. Yet despite this knowledge, some in this body are proposing we repeat the mistakes of the past; that we create new walls and other arbitrary legal procedures to the surveillance of al-Qaida. We know from hard experience terrorist plots are hard to detect, and we don't get many chances to stop them. We know what a terrible loss of life a terrorist attack can inflict.

We know if another terrorist attack occurs, there will be multiple reviews and investigations that will identify what went wrong, what opportunities were missed, and who was responsible. Members who are thinking about supporting the Judiciary Committee bill should think hard about the consequences of enacting a set of arbitrary limits on the surveillance of al-Qaida. If that substitute is enacted, it is likely to undermine future critical intelligence investigations, just as the wall

between intelligence and criminal investigations undermined the search for the 9/11 hijackers. Future investigations will uncover exactly what went wrong, and we will be held accountable for our actions.

I urge my colleagues to reject the Judiciary Committee substitute and vote to ensure our intelligence agents have the tools they need to confront the threat posed by al-Qaida and other foreign terrorist organizations.

The PRESIDING OFFICER. The Senator from Tennessee is recognized.

Mr. ALEXANDER. Mr. President, I wish to congratulate the Senator from Arizona on his thoughtful comments regarding intelligence.

How much time remains?

The PRESIDING OFFICER. There are 18 minutes remaining.

Mr. ALEXANDER. Mr. President, I will take half that, and if the Chair will let me know when 2 minutes remain, I will be grateful.

#### REPUBLICANS READY TO WORK

Mr. ALEXANDER. I, too, welcome ROGER WICKER to the Senate. I have known him a long time. He has been a leader for the Tennessee Valley Authority. He is one of Congress's most knowledgeable Members, and he has been a leader in helping to put American history back in its rightful place in our classrooms so our children can grow up learning what it means to be an American. He was the lead sponsor in the House of Representatives on legislation that I introduced in the Senate that created summer academies for outstanding teachers and students of American history.

I would also like to congratulate Marty Paone on his service here. We all admire him and will miss him.

I thank the majority leader for his remarks at the beginning of the year, and I especially wanted to echo the remarks the Republican leader, Senator MCCONNELL of Kentucky, made. He pointed out that we have had a Presidential election in this country every 4 years since 1788. Senator MCCONNELL pointed that out, and he said we would not use this year's election as an excuse to put off the people's business for another day. In other words, it is a Presidential year, and some around town are writing and saying: Well, they will not get much done in Congress this year. We are saying on the Republican side of the aisle, and I hope it is being said on both sides of the aisle, that there is no excuse for Congress to take a year off, given the serious issues facing our country.

A number of politicians are campaigning for change, we have all heard. Republican Senators are ready to help, working with our colleagues, to give the Senate an opportunity to vote for real change. We wish to change the way Washington does business by going to work on big issues facing our country. And not just go to work on them but to get principled solutions this

year. And because this is the Senate, where it often takes 60 votes to get a meaningful result, that means we invite the Democrats to work with us in a bipartisan way to get those results.

Republicans didn't seek our offices to do bad things to Democrats. We are here to do good things for our country, and there is plenty to do. We see what is happening in the housing market, with oil prices, with rising health care costs. We know we need to move quickly with a bipartisan approach to help get the economy back on track. Our preference is to let businesses and people keep and spend more of their own money to boost the economy. We want to grow the economy, not the Government.

We know we need, as Senator KYL was saying, to intercept communications among terrorists to protect our country. We saw the Rockefeller-Bond bipartisan proposal passed by 13 to 2 in the Intelligence Committee. Our solution is to make sure companies aren't penalized for helping us protect ourselves, while at the same time securing individual rights. We want a strong national defense.

We see there are 40 million or so Americans uninsured, and we want to change that. We don't want to take a year off in dealing with health insurance. We want to start this year. As the Republican leader said, our goal is that every American have health insurance, starting with small business health insurance plans, moving on to reforming the Tax Code so Americans can afford to buy private insurance. There are a number of Democratic and Republican proposals on reaching the goal we have in helping every American to have health insurance. We can start this year.

There is no need to wait to deal with Medicaid and Medicare spending another year. We all know, at their present pace of growth, those two accounts will bankrupt our Government. It is irresponsible to wait. That is a bipartisan conclusion. There are a number of proposals from both sides of the aisle to begin to deal with that, from Senator GREGG and Senator CONRAD, to Senator FEINSTEIN and Senator DOMENICI and Senator VOINOVICH as well. We should get started. These are the principles of fiscal responsibility and limited Government.

Last year, we took some important steps to keep jobs from going overseas by growing more jobs at home. We see the problem of competition with China and India. We worked together to pass a bill—the American COMPETES Act—authorizing \$34 billion to keep our brainpower advantage. Now let us implement it. Senator HUTCHISON of Texas, Senators BINGAMAN and DOMENICI of New Mexico, and many others have worked hard on this. So let us implement more advanced placement courses for low-income students, a million and a half more; more highly trained scientists and engineers coming in to help grow jobs in the United

States; and 10,000 more math and science teachers. That we can do.

We know we have to be bipartisan to get a result. Some things are bipartisan, and I have mentioned many of them, but some things should be bipartisan that aren't. For example, the Federal Government is saying the Salvation Army can't require its employees to speak English on the job. Well, Americans, by 80 to 17 percent, believe employers should be able to require their employees to speak America's common language on the job. We have legislation to make that clear. It is bipartisan to some degree, but not as bipartisan as it ought to be. The principle is right there above the Senate Presiding Officer's desk. It says: One from many—"e pluribus unum."

Another challenge that should be more bipartisan, because most Americans see the wisdom of it, is addressing a shortage of medical care in rural America caused by lawsuit abuse. OB-GYN doctors are abandoning rural areas across America and mothers are driving too far for prenatal health care and to have their babies. We should work across party lines to change that. The solution we have offered is to stop runaway lawsuits that make doctors pay \$100,000 or more a year for malpractice insurance. That is why they leave the rural areas. This is the principle of equal opportunity.

There is plenty of work to do. Thirty years ago, I began my service as the Governor of Tennessee. I was a young Republican Governor and the State was very Democratic, thank you. So the media ran up to the big Democratic speaker of the house, Ned McWherter, and said: Mr. Speaker, what are you going to do with this new young Republican Governor? And to their surprise, the speaker said: I am going to help him. Because if he succeeds, our State succeeds. And that is the way we worked for 8 years.

Now, we are not naive about politics in Tennessee. We had, and have, our fights. We argued about our principles. If I had a better schools program, they had an even better schools program on the other side. But we kept our eye on the ball. In the end, we worked together. In the end, we got results. That is why we brought in the auto industry and created the best four-lane highway system and created chairs and centers of excellence at our universities that still exist, and we began to pay teachers more for teaching well.

I would like nothing more than to move that kind of cooperation from Tennessee to DC. I sense that from Democrats and Republicans all through this body. Of course, we will argue. We were elected because we have differences. This is a debating society. But we don't stop with our disagreements, we should finish with our results. So we are here to change the way Washington does business, as the Republican leader said, and I look forward to a constructive year of helping our country move ahead with a steady