(B) any other applicable laws.

(f) SPECIAL MANAGEMENT AREAS.—

(1) IN GENERAL.—The establishment of the Conservation Area shall not change the management status of any area within the boundary of the Conservation Area that is—

(A) designated as a component of the National Wild and Scenic Rivers System under the Wild and Scenic Rivers Act (16 U.S.C. 1271 et seq.); or

(B) managed as an area of critical environmental concern.

(2) CONFLICT OF LAWS.—If there is a conflict between the laws applicable to the areas described in paragraph (1) and this Act, the more restrictive provision shall control.

SEC. 4. DESIGNATION OF WILDERNESS AREAS.

(a) IN GENERAL.—In accordance with the Wilderness Act (16 U.S.C. 1131 et seq.), the following areas in the Conservation Area are designated as wilderness and as components of the National Wilderness Preservation System:

(1) CERRO DEL YUTA WILDERNESS.—Certain land administered by the Bureau of Land Management in Taos County, New Mexico, comprising approximately 13,420 acres as generally depicted on the map, which shall be known as the ''Cerro del Yuta Wilderness''.

(2) RÍO SAN ANTONIO WILDERNESS.—Certain land administered by the Bureau of Land Management in Rio Arriba County, New Mexico, comprising approximately 8,000 acres, as generally depicted on the map, which shall be known as the ''Río San Antonio Wilderness''.

(b) MANAGEMENT OF WILDERNESS AREAS.—Subject to valid existing rights, the wilderness areas designated by subsection (a) shall be administered in accordance with the Wilderness Act (16 U.S.C. 1131 et seq.) and this Act, except that with respect to the wilderness areas designated by this Act—

(1) any reference to the effective date of the Wilderness Act shall be considered to be a reference to the date of enactment of this Act; and

(2) any reference in the Wilderness Act to the Secretary of Agriculture shall be considered to be a reference to the Secretary.

(c) INCORPORATION OF ACQUIRED LAND AND INTERESTS IN LAND.—Any land or interest in land within the boundary of the wilderness areas designated by subsection (a) that is acquired by the United States shall—

(1) become part of the wilderness area in which the land is located; and

(2) be managed in accordance with—

(A) the Wilderness Act (16 U.S.C. 1131 et seq.);

(B) this Act; and

(C) any other applicable laws.

(d) GRAZING.—Grazing of livestock in the wilderness areas designated by subsection (a), where established before the date of enactment of this Act, shall be administered in accordance with—

(1) section 4(d)(4) of the Wilderness Act (16 U.S.C. 1133(d)(4)); and

(2) the guidelines set forth in Appendix A of the Report of the Committee on Interior and Insular Affairs to accompany H.R. 2570 of the 101st Congress (H. Rept. 101–405).

(e) BUFFER ZONES.—

(1) IN GENERAL.—Nothing in this section creates a protective perimeter or buffer zone around any wilderness area designated by subsection (a).

(2) ACTIVITIES OUTSIDE WILDERNESS AREAS.—The fact that an activity or use on land outside any wilderness area designated by subsection (a) can be seen or heard within the wilderness area shall not preclude the activity or use outside the boundary of the wilderness area.

(f) RELEASE OF WILDERNESS STUDY AREAS.—Congress finds that, for purposes of section 603(c) of the Federal Land Policy and Management Act of 1976 (43 U.S.C. 1782(c)), the public land within the San Antonio Wilderness Study Area not designated as wilderness by this section—

(1) has been adequately studied for wilderness designation;

(2) is no longer subject to section 603(c) of the Federal Land Policy and Management Act of 1976 (43 U.S.C. 1782(c)); and

(3) shall be managed in accordance with this Act.

SEC. 5. GENERAL PROVISIONS.

(a) MAPS AND LEGAL DESCRIPTIONS.—

(1) IN GENERAL.—As soon as practicable after the date of enactment of this Act, the Secretary shall file the map and legal descriptions of the Conservation Area and the wilderness areas designated by section 4(a) with—

(A) the Committee on Energy and Natural Resources of the Senate; and

(B) the Committee on Natural Resources of the House of Representatives.

(2) FORCE OF LAW.—The map and legal descriptions filed under paragraph (1) shall have the same force and effect as if included in this Act, except that the Secretary may correct errors in the legal description and map.

(3) PUBLIC AVAILABILITY.—The map and legal descriptions filed under paragraph (1) shall be on file and available for public inspection in the appropriate offices of the Bureau of Land Management.

(b) NATIONAL LANDSCAPE CONSERVATION SYSTEM.—The Conservation Area and the wilderness areas designated by section 4(a) shall be administered as components of the National Landscape Conservation System.

(c) FISH AND WILDLIFE.—Nothing in this Act affects the jurisdiction of the State with respect to fish and wildlife located on public land in the State, except that the Secretary, after consultation with the New Mexico Department of Game and Fish, may designate zones where, and establishing periods when, hunting shall not be allowed for reasons of public safety, administration, or public use and enjoyment.

(d) WITHDRAWALS.—Subject to valid existing rights, any Federal land within the Conservation Area and the wilderness areas designated by section 4(a), including any land or interest in land that is acquired by the United States after the date of enactment of this Act, is withdrawn from—

(1) entry, appropriation, or disposal under the public land laws;

(2) location, entry, and patent under the mining laws; and

(3) operation of the mineral leasing, mineral materials, and geothermal leasing laws.

(e) TREATY RIGHTS.—Nothing in this Act enlarges, diminishes, or otherwise modifies any treaty rights.

SEC. 6. AUTHORIZATION OF APPROPRIATIONS.

There are authorized to be appropriated such sums as are necessary to carry out this Act.

By Mr. SPECTER (for himself, Mr. TESTER, and Mr. GRASSLEY):

S. 875. A bill to regulate the judicial use of presidential signing statements in the interpretation of Acts of Congress; to the Committee on the Judiciary.

Mr. SPECTER. Mr. President, I seek recognition today on behalf of myself, Senator GRASSLEY and Senator TESTER, to offer the Presidential Signing Statements Act of 2009. The purpose of this bill is to regulate the use of Presidential Signing Statements in the interpretation of Acts of Congress. This bill is similar in substance to two prior versions of this legislation: the Presidential Signing Statements Act of 2007, which I introduced on June 29, 2007; and the Presidential Signing Statements Act of 2006, which I introduced on July 26, 2006.

As I have stated before, I believe that this legislation is necessary to protect our constitutional system of checks and balances. This bill achieves that goal in the following ways.

First, it prevents the President from issuing a signing statement that alters the meaning of a statute by instructing federal and state courts not to rely on, or defer to, presidential signing statements as a source of authority when determining the meaning of any Act of Congress.

Second, it grants Congress the power to participate in any case where the construction or constitutionality of any Act of Congress is in question and a presidential signing statement for that Act was issued by allowing Congress to file an amicus brief and present oral argument in such a case; instructing that, if Congress passes a joint resolution declaring its view of the correct interpretation of the statute, the Court must admit that resolution into the case record; and providing for expedited review in such a case.

Since the days of President James Monroe, Presidents have issued statements when signing bills. It is widely agreed that there are legitimate uses for signing statements. For example, Presidents may use signing statements to instruct executive branch officials how to administer a law or to explain to the public the likely effect of a law. There may be a host of other legitimate uses.

It is clear, however, that the President cannot use a signing statement to rewrite the words of a statute, nor can he use a signing statement to selectively nullify those provisions he does not like. This much is clear from our Constitution. The Constitution grants the President a specific, defined role in enacting legislation. Article I, section 1 of the Constitution vests ''all legislative powers . . . in a Congress.'' Article I, section 7 of the Constitution provides that, when a bill is presented to the President, he may either sign it or veto it with his objections. He may also choose to do nothing, thus rendering a so-called pocket veto. But the President cannot veto part of a bill—he cannot veto certain provisions he does not like.

The Framers had good reason for constructing the legislative process as they did. According to The Records of the Constitutional Convention, the veto power was designed to protect citizens from a particular Congress that might enact oppressive legislation. However, the Framers did not want the veto power to be unchecked, and so, in Article I, section 7, they balanced it by allowing Congress to override a veto by 2/3 vote.

As I stated when I initially introduced this legislation in 2006, this is a finely structured constitutional procedure that goes straight to the heart of our system of checks and balances. Any action by the President that circumvents this procedure is an unconstitutional attempt to usurp legislative authority. If the President is permitted to re-write the bills that Congress passes and cherry pick which provisions he likes and does not like, he subverts the constitutional process designed by the Framers. The Supreme Court has affirmed that the Constitutional process for enacting legislation must be safeguarded. As the Court explained in INS v. Chahda, ''It emerges clearly that the prescription for legislative action in Article I, Section 1 and 7 represents the Framers' decision that the legislative power of the Federal Government be exercised in accord with a single, finely wrought and exhaustively considered, procedure.'' 462 U.S. 919, 951, 1982.

It is well within Congress's power to enact rules of statutory interpretation intended to preserve this constitutional structure. This power flows from Article I, section 8, clause 18 of the Constitution, which gives Congress the power ''To make all laws which shall be necessary and proper for carrying into execution the foregoing powers, and all other powers vested by this Constitution in the Government of the U.S., or in any department or officer thereof.'' Rules of statutory interpretation are ''necessary and proper'' to execute the legislative power.

Several scholars have agreed: Jefferson B. Fordham, a former Dean of the University of Pennsylvania Law School said, ''[I]t is within the legislative power to lay down rules of interpretation for the future;'' Mark Tushnet, a Professor at Harvard Law School explained, ''In light of the obvious congressional power to prescribe a statute's terms (and so its meaning), congressional power to prescribe interpretive methods seems to me to follow;'' Michael Stokes Paulsen, an Associate Dean of the University of Minnesota Law School noted, ''Congress is the master of its own statutes and can prescribe rules of interpretation governing its own statutes as surely as it may alter or amend the statutes directly.'' Finally, J. Sutherland, the author of the leading multi-volume treatise for the rules of statutory construction has said, ''There should be no question that an interpretive clause operating prospectively is within legislative power.''

Indeed, recent experience shows why such legislation is ''necessary.'' The use of signing statements has risen dramatically in recent years. President Clinton issued 105 signing statements; President Bush issued 161. What is more alarming than the sheer numbers, is that President Bush's signing statements often raised constitutional concerns and other objections to several provisions of a law. The President used those statements in a way that threatened to render the legislative process a virtual nullity, making it completely unpredictable how certain laws will be enforced. Even where Congress managed to negotiate checks on executive power, the President used signing statements to override the legislative language and defy congressional intent.

Two prominent examples make the point. In 2006, I spearheaded the delicate negotiations on the PATRIOT Act Reauthorization, which included months of painstaking efforts to balance national security and civil liberties, disrupted by the dramatic disclosure of the Terrorist Surveillance Program. The final version of the bill featured a carefully crafted compromise necessary to secure the act's passage. Among other things, it included several oversight provisions designed to ensure that the FBI did not abuse special terrorism-related powers permitting it to make secret demands for business records. The President dutifully signed the measure into law, only to then enter a signing statement insisting he could withhold any information from Congress required by the oversight provisions if he decided that disclosure would ''impair foreign relations, national security, the deliberative process of the executive, or the performance of the executive's constitutional duties.''

The second example arose in 2005. Congress overwhelmingly passed Senator JOHN MCCAIN'S amendment to ban all U.S. personnel from inflicting ''cruel, inhuman or degrading'' treatment on any prisoner held by the United States. There was no ambiguity in Congress's intent; in fact, the Senate approved it 90 to 9. However, after signing the bill into law, the President quietly issued a signing statement asserting that his Administration would construe it ''in a manner consistent with the constitutional authority of the President to supervise the unitary executive branch and as Commander in Chief and consistent with the constitutional limitations on the judicial power.''

Many understood this signing statement to undermine the legislation. In a January 4, 2006 article titled, ''Bush could bypass new torture ban: Waiver right is reserved,'' the Boston Globe cited an anonymous ''senior administration official'' as saying, ''the president intended to reserve the right to use harsher methods in special situations involving national security.''

As outrageous as these signing statements are, intruding on the Constitution's delegation of ''all legislative powers'' to the Congress, it is even more outrageous that Congress has done nothing to protect its constitutional powers. In 2006 and 2007, the legislation I introduced giving Congress standing to challenge the constitutionality of these signing statements failed to muster the veto-proof majority it would have surely required.

With a new administration, I believe the time has come to pass this important legislation. This bill does not seek to limit the President's power, and it does not seek to expand Congress's power. Rather, this bill simply seeks to safeguard our Constitution. In this Congress, it has a better chance of mustering a majority vote and being signed into law by the new President.

That said, two days after criticizing President Bush's signing statements, President Obama issued one of his own regarding the Omnibus Appropriations Act of 2009. Citing among others his ''commander in chief'' and ''foreign affairs'' powers, he refused to be bound by at least eleven specific provisions of the bill including one long-standing rider to appropriations bills designed to aid congressional oversight. As I told The Wall Street Journal, ''We are having a repeat of what Democrats bitterly complained about under President Bush.'' I hope this will be the exception rather than the rule.

In the meantime, this bill seeks to implement measures that will safeguard the constitutional structure of enacting legislation. In preserving this structure, this bill reinforces the system of checks and balances and separation of powers set out in our Constitution.

Mr. President, I ask unanimous consent that the text of the bill be printed in the RECORD.

There being no objection, the text of the bill was ordered to be printed in the RECORD, as follows:

S. 875

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 ''Presidential Signing Statements Act of 2009''.

SEC. 2. DEFINITION.

As used in this Act, the term ''presidential signing statement'' means a statement issued by the President about a bill, in conjunction with signing that bill into law pursuant to Article I, section 7, of the Constitution.

SEC. 3. JUDICIAL USE OF PRESIDENTIAL SIGNING STATEMENTS.

In determining the meaning of any Act of Congress, no Federal or State court shall rely on or defer to a presidential signing statement as a source of authority.

SEC. 4. CONGRESSIONAL RIGHT TO PARTICIPATE IN COURT PROCEEDINGS OR SUBMIT CLARIFYING RESOLUTION.

(a) CONGRESSIONAL RIGHT TO PARTICIPATE AS AMICUS CURIAE.—In any action, suit, or proceeding in any Federal or State court (including the Supreme Court of the United States), regarding the construction or constitutionality, or both, of any Act of Congress in which a presidential signing statement was issued, the Federal or State Court shall permit the United States Senate, through the Office of Senate Legal Counsel, as authorized in section 701 of the Ethics in Government Act of 1978 (2 U.S.C. 288), or the United States House of Representatives, through the Office of General Counsel for the United States House of Representatives, or both, to participate as an amicus curiae, and to present an oral argument on the question of the Act's construction or constitutionality, or both. Nothing in this section shall be construed to confer standing on any party seeking to bring, or jurisdiction on

any court with respect to, any civil or criminal action, including suit for court costs, against Congress, either House of Congress, a Member of Congress, a committee or subcommittee of a House of Congress, any office or agency of Congress, or any officer or employee of a House of Congress or any office or agency of Congress.

(b) CONGRESSIONAL RIGHT TO SUBMIT CLARIFYING RESOLUTION.—In any suit referenced in subsection (a), the full Congress may pass a concurrent resolution declaring its view of the proper interpretation of the Act of Congress at issue, clarifying Congress's intent or clarifying Congress's findings of fact, or both. If Congress does pass such a concurrent resolution, the Federal or State court shall permit the United States Congress, through the Office of Senate Legal Counsel, to submit that resolution into the record of the case as a matter of right.

(c) EXPEDITED CONSIDERATION.—It shall be the duty of each Federal or State court, including the Supreme Court of the United States, to advance on the docket and to expedite to the greatest possible extent the disposition of any matter brought under subsection (a).

By Mr. SPECTER (for himself and Mr. WHITEHOUSE):

S. 876. A bill to provide for the substitution of the United States in certain civil actions relating to electronic service providers and FISA; to the Committee on the Judiciary.

Mr. SPECTER. Mr. President, I have sought recognition to reintroduce legislation that would substitute the United States in the place of electronic communications service providers who were sued for violating the Foreign Intelligence Surveillance Act, FISA, and other statutory and constitutional provisions.

FISA reform legislation passed the Senate in February and July of 2008, both times by a vote of 68 to 29, before being signed into law by President Bush on July 10, 2008. This legislation made many necessary changes to FISA to enhance our intelligence collection capabilities, but it also included a controversial provision giving retroactive immunity to telecommunications companies for their alleged cooperation with the warrantless surveillance program authorized by the President after September 11, 2001. The legislation stripped the Federal courts of jurisdiction to decide more than 40 consolidated cases involving claims of violations of FISA and related statutes, even though most Members of Congress had not been briefed on the program, and despite the fact that the judge handling the cases, Chief Judge Vaughn Walker of the Northern District of California, had questioned the legality of the program in a related opinion issued just days before the final Senate debate.

During the February and July FISA debates, I sought to keep the courts open as a way to check executive branch excesses. Through both a standalone bill, S. 2402, considered by the Senate Judiciary Committee and an amendment, SA 3927 to S. 2248, offered during the Senate's February debate on the FISA reform bill, I proposed to substitute the U.S. Government for the telephone companies facing lawsuits for their alleged cooperation with the Terrorist Surveillance Program, TSP. Just as in 2008, I propose legislation that would place the Government in the shoes of the telephone companies, with the same defenses no more and no less. Thus, under the bill, plaintiffs get their day in court and may hold the Government accountable for unlawful activity, if any, related to the surveillance program. At the same time, the carriers themselves avoid liability stemming from their efforts to be good citizens.

I fought hard in 2008 to keep the courts open on the question of the TSP, and urged my colleagues to improve the FISA bill. I continue that fight today with a new Administration in office. During the prior floor debate I said: ''Although I am prepared to stomach this bill, if I must, I am not yet ready to concede that the debate is over. Contrary to the conventional wisdom, I don't believe it is too late to make this bill better.''

As I observed on the floor last year, it is necessary for Congress to support intelligence collection efforts because of the continuing terrorist threat. No one wants to be blamed for another 9–11. Indeed, as I acknowledged during the debate, my own briefings on the telephone companies' cooperation with the Government convinced me of the program's value. Nevertheless, I tried to impress upon my colleagues the importance and historical context of our actions. I said:

We are dealing here with a matter that is of historic importance. I believe that years from now, historians will look back on this period from 9/11 to the present as the greatest expansion of Executive authority in history—unchecked expansion of authority. The President disregards the National Security Act of 1947 mandating notice to the Intelligence Committee; he doesn't do it. The President takes legislation that is presented by Congress and he signs it, and then he issues a signing statement disagreeing with key provisions. There is nothing Congress can do about it.

The Supreme Court of the United States has gone absent without leave on the issue, in my legal opinion. When the Detroit Federal judge found the terrorist surveillance program unconstitutional, it was [reversed] by the Sixth Circuit on a 2-to-1 opinion on grounds of lack of standing. Then the Supreme Court refused to review the case. But the very formidable dissenting opinion laid out all of the grounds where there was ample basis to grant standing. Now we have Chief Judge Walker declaring the [surveillance illegal]. The Congress ought to let the courts fulfill their constitutional function.

It is not too late to provide for judicial review of controversial post-9/11 intelligence surveillance activities. The cases before Judge Vaughn Walker are still pending and, even if he were to dismiss them under the statutory defenses dubbed retroactive immunity, Congress can and should permit the cases to be refiled against the Government, standing in the shoes of the carriers.

This legislation substitutes the U.S. in place of any electronic communication service provider who provided communications in connection with an intelligence activity that was: authorized by the President between September 11, 2001, and January 17, 2007; and designed to detect or prevent a terrorist attack against the U.S. In order for substitution to apply, the electronic communications service provider must have received a written request from the Attorney General or the head of an element of the intelligence community indicating that the activity was authorized by the President and determined to be lawful. If the provider assisted the Government beyond what was requested in writing, this legislation will provide no relief to the service provider.

The legislation also establishes a limited waiver of sovereign immunity that only applies to ''covered civil actions'' essentially, the 40 cases currently pending before the U.S. District Court in the Northern District of California. This is to prevent the Government from asserting immunity in the event it is substituted for the current defendants.

We can still pass legislation substituting the Government for the various telecom defendants and have a judicial assessment of the constitutionality and legality of the controversial surveillance. Such a judicial assessment is necessary to resolve the clash between the Executive and Legislative branches over the legality and constitutionality of the surveillance program.

Mr. President, I ask unanimous consent that the text of the bill be printed in the RECORD.

There being no objection, the text of the bill was ordered to be printed in the RECORD, as follows:

S. 876

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

SECTION 1. AMENDMENT TO FISA.

Title III of the Foreign Intelligence Surveillance Act of 1978 Amendments Act of 2008 (Public Law 110-261) is amended by inserting at the end the following:

''SEC. 302. SUBSTITUTION OF THE UNITED STATES IN CERTAIN ACTIONS.

''(a) IN GENERAL.—

''(1) CERTIFICATION.—Notwithstanding any other provision of law, a Federal or State court shall substitute the United States for an electronic communication service provider with respect to any claim in a covered civil action as provided in this subsection, if the Attorney General certifies to that court that—

''(A) with respect to that claim, the assistance alleged to have been provided by the electronic communication service provider was—

''(i) provided in connection with an intelligence activity involving communications that was—

''(I) authorized by the President during the period beginning on September 11, 2001, and ending on January 17, 2007; and

''(II) designed to detect or prevent a terrorist attack, or activities in preparation for a terrorist attack, against the United States; and

''(ii) described in a written request or directive from the Attorney General or the