To exonerate the late Rear Admiral Charles Butler McVay III, captain of the U.S.S. INDIANAPOLIS when it was sunk on July 30, 1945, from responsibility for that sinking, and for other purposes.

IN THE HOUSE OF REPRESENTATIVES

April 22, 1998

Mr. Scarborough (for himself, Ms. Carson, Mr. Cunningham, Mrs. Mink of Hawaii, Mr. Sawyer, Mr. Abercrombie, and Mr. Frost) introduced the following bill; which was referred to the Committee on National Security

A BILL

To exonerate the late Rear Admiral Charles Butler McVay III, captain of the U.S.S. INDIANAPOLIS when it was sunk on July 30, 1945, from responsibility for that sinking, and for other purposes.

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

2 SECTION 1. SHORT TITLE.

3 This Act may be cited as the “Charles Butler McVay and U.S.S. INDIANAPOLIS Relief Act”.

4 SEC. 2. FINDINGS.

5 Congress makes the following findings:
(1) Shortly after midnight on the night of July 30, 1945, during the closing days of World War II, the United States Navy heavy cruiser U.S.S. INDIANAPOLIS (CA-35) was torpedoed and sunk by a Japanese submarine.

(2) Of the 1,196 crew members, only 316 survived the attack and subsequent five-day ordeal adrift at sea, the rest of the crew dying from battle wounds, drowning, shark attacks, exposure, or lack of food and water, making the sinking of the INDIANAPOLIS the worst sea disaster in United States naval history.

(3) Following the rescue of the surviving crew members, the commanding officer of the INDIANAPOLIS, Captain Charles Butler McVay III, who survived the sinking and the ordeal at sea, was charged with “suffering a vessel to be hazarded through negligence” and was convicted by a court-martial of that charge, notwithstanding a great many extenuating circumstances, some of which were not presented at the court-martial trial.

(4) Captain McVay had an excellent record throughout his naval career before the sinking of the INDIANAPOLIS, beginning with his graduation from the United States Naval Academy in 1919 and
including an excellent combat record throughout World War II that included participation in the landings in North Africa and award of the Silver Star for courage under fire earned during the Solomon Island campaign.

(5) Assuming command of the INDIANAPOLIS on November 18, 1944, Captain McVay led the ship during her participation in the assaults on Iwo Jima and Okinawa. During the latter assault, the INDIANAPOLIS suffered a damaging kamikaze attack, but was skillfully returned by Captain McVay and her crew to San Francisco for repairs.

(6) Following completion of those repairs, the INDIANAPOLIS was given the mission of transporting to the island of Tinian the vital parts for the two atomic bombs used in ending the war against Japan, a mission which was completed successfully on July 26, 1945, at a record average speed of 29 knots.

(7) Following the accomplishment of that mission, the INDIANAPOLIS sailed from Tinian to Guam and from there embarked for Leyte Gulf in the Philippines, to join with the fleet assembling for the assault on Japan.
(8) Before that last voyage, the headquarters of the Commander-in-Chief, Pacific Fleet (CINCPAC), failed to inform Captain McVay of intelligence in its possession concerning the activities of four Japanese submarines sighted along the route the INDIANAPOLIS would be sailing and where a Japanese submarine had sunk the U.S.S. UNDERHILL just days earlier. Nevertheless, Captain McVay was instructed to sail a direct route from Guam to Leyte, although this route brought the ship to the crossroads of the Guam-Leyte and Palau-Okinawa routes, an area that Japanese submarines would likely have heavily targeted due to the greater chance of spotting United States naval traffic there.

(9) Because the INDIANAPOLIS did not have the capabilities to detect enemy submarines, Captain McVay in Guam requested a destroyer escort for the voyage to Leyte Gulf, a request which was denied, making the INDIANAPOLIS the first United States heavy warship to make that crossing unescorted during World War II.

(10) After the INDIANAPOLIS was sunk, various Navy shore offices compounded the previous errors which had led to the ship being placed in jeopardy by failing to report the ship’s overdue arrival,
thus leaving the approximately 950 members of the
crew who survived the sinking of the ship adrift for
four days and five nights until by chance the sur-
vivors were spotted by a routine air patrol.

(11) Because the news of the sinking of the IN-
DIANAPOLIS, coinciding with the end of the war
in the Pacific, threatened to detract from the Navy’s
role in that victory and from its desire for prominent
status in the post-war military establishment, the
Department of the Navy court-martialed Captain
McVay, who thus became the first United States
Navy commanding officer brought to trial for losing
his ship in combat in World War II, despite the fact
that over 700 ships were lost during World War II,
including some under questionable circumstances.

(12) A court of inquiry to investigate the sink-
ing, convened on August 13, 1945, just two weeks
after the sinking and 9 days after the survivors were
rescued (a date so soon after the sinking that Cap-
tain William Hillbert, the Navy judge advocate for
the inquiry, admitted that the inquiry was so rushed
that they were “...starting the proceedings with-
out having available all the necessary data”), rec-
ommended that Captain McVay be issued a Letter
of Reprimand and that he be court-martialed.
The court-martial charge against Captain McVay was entirely predicated upon his failure to order that the ship maintain a zigzag course even though (A) standing orders stated that zigzagging was not necessary during poor visibility (reported to have been at best “patchy” that night), (B) Mochitsura Hashimoto, the Japanese submarine commander who sank the ship, testified at the inquiry that it would not have made any difference if the ship were zigzagging or not, and (C) the headquarters staff of CINCPAC concluded that the rule requiring zigzagging would not have applied in any event since Captain McVay’s routine orders gave him discretion on the matter and took precedence over all other orders (a point that was never made by Captain McVay’s attorney).

The headquarters staff of CINCPAC disagreed with the recommendation of the court of inquiry that Captain McVay receive a Letter of Reprimand and that he be court-martialed, stating that in not maintaining a zigzag course Captain McVay at worst was guilty only of an error in judgment and not gross negligence.
(15) Captain McVay was convicted on February 23, 1946, of the charge of “suffering a vessel to be hazarded through negligence”.

(16) Following his court-martial conviction, Captain McVay remained on active duty until mandatory retirement on June 30, 1949, upon completion of 30 years of active naval service, with a final promotion, in accordance with then-applicable law, to the grade of rear admiral, effective upon the date of his retirement.

(17) Rear Admiral Charles Butler McVay III (retired), died on November 6, 1968, without having been exonerated from responsibility for the sinking of the INDIANAPOLIS.

(18) Since the late 1980s, Navy documents have been declassified that show that Captain McVay was not given intelligence information in the possession of the Navy that would have been instrumental in avoiding the disaster and that that information, which was considered to be Top Secret, was not made available for use in Captain McVay’s court-martial, where it would have been critical to his defense in showing that he was court-martialed on “super-technical” charges which nevertheless were unfounded.

(20) In 1994, Congress, in section 1052 of the National Defense Authorization Act for Fiscal Year 1995 (Public Law 103–337; 108 Stat. 2844), stating that it was acting on behalf of the grateful people of the United States—

(A) recognized the invaluable contributions of the U.S.S. INDIANAPOLIS to the ending of World War II; and

(B) on the occasion of the 50th anniversary of her tragic sinking, and the dedication of the national memorial in Indianapolis on July 30th, 1995, commended that ship and her crew for selfless and heroic service to the United States.

SEC. 3. CONGRESSIONAL EXONERATION.

The Congress hereby—

(1) exonerates the late Rear Admiral Charles Butler McVay III, United States Navy (retired),
from responsibility for the sinking of the U.S.S. INDIANAPOLIS (CA–35) on July 30, 1945, while under his command;

(2) expresses the sense of the Congress that the subsequent court-martial conviction of Rear Admiral McVay (while in the grade of captain) for “suffering a vessel to be hazarded through negligence” was a grave injustice; and

(3) urges the President to grant a posthumous pardon to Rear Admiral McVay.

SEC. 4. PRESIDENTIAL UNIT CITATION.

(a) Sense of Congress.—It is the sense of the Congress that the President should award a Presidential Unit Citation to the final crew of the U.S.S. INDIANAPOLIS (CA–35) in recognition of the courage and fortitude displayed by the members of that crew in the face of tremendous hardship and adversity after their ship was torpedoed and sunk on July 30, 1945.

(b) Waiver of Time Limitation.—A citation described in subsection (a) may be made without regard to any provision of law or regulation prescribing a time limitation that is otherwise applicable with respect to recommendation for, or the award of, such a citation.