

applicable, service marks shall be registrable, in the same manner and with the same effect as are trademarks, and when registered they shall be entitled to the protection[s], rights and privileges] provided in this chapter in the case of trademarks. Applications and procedure under this section shall conform as nearly as practicable to those prescribed for the registration of trademarks.

*Sec. 4 [15 U.S.C. 1054]. Collective marks and certification marks registrable*

Subject to the provisions relating to the registration of trademarks, so far as they are applicable, collective and certification marks, including indications of regional origin, shall be registrable under this chapter, in the same manner and with the same effect as are trademarks, by persons, and nations. States, municipalities, and the like, exercising legitimate control over the use of the marks sought to be registered, even though not possessing an industrial or commercial establishment, and when registered they shall be entitled to the protection[s], rights and privileges] provided in this chapter in the case of trademarks, except in the case of certification marks when used so as to represent falsely that the owner or a user thereof makes or sells the goods or performs the services on or in connection with which such mark is used. Applications and procedure under this section shall conform as nearly as practicable to those prescribed for the registration of trademarks.

BACKGROUND AND JUSTIFICATION

Section 4 of the Lanham Act, 15 U.S.C. §1054, states that certification marks and collective marks "shall be entitled to the protection provided" to trademarks. This section expresses the congressional intention that all certification marks and collective marks be treated with equivalent rights and protections to trademarks, except where Congress, by statute, has expressly provided otherwise.

It is common in trademark, service mark, collective mark and certification mark licenses to include provisions under which licensees acknowledge the validity of an agree not to challenge the marks. These "no challenge" provisions play an important role in protecting the marks, reducing mark owners' litigation costs, and providing assurances to licensees that the marks they are investing in will have continued validity. After applying principles of equity, many courts have upheld such "no challenge" provisions in trademark licenses and dismissed validity challenges.

Recently, the Second Circuit Court of Appeals in the case of *Idaho Potato Commission v. M & M Produce Farm and Sales*, 335 F.3d 130 (2d Cir. 2003), interpreted the Lanham Act as requiring that certification marks be treated differently from trademarks with respect to "no challenge" provisions. The court reasoned that the public policy underlying certification marks was more analogous to the public policy underlying patents. As a result, the court ruled that licensee certification mark no challenge provisions are governed by the Supreme Court's decision in *Lear, Inc v. Adkins*, 395 U.S. 653 (1969). The Second Circuit's decision appears to have gone beyond congressional intent relating to certification marks. Certification marks have none of the preclusive effects of patents. Rather, the competitive effects of certification marks are the same as trademarks. Certification marks guard the public from deception and protect mark owners' and their licensees' investments. Like trademarks, certification marks provide information vital to consumers' purchasing decisions. Certification marks help consumers identify goods and services that have the quality and safety features they want.

It is important to remove any perceived distinction between certification marks and collective marks as compared to trademarks, except as expressly provided otherwise by statute. Therefore, this bill clarifies Congress, original intentions regarding the treatment of certification marks and collective marks through this amendment to Section 4 of the Act. Licenses governing certification marks, and the provisions contained in such licenses, should be treated no less favorably than licenses for trademarks and other marks. "No challenge" provisions, and other non-quality related provisions in certification mark licenses or agreements are to be accorded the same respect and treatment, and are to be subject to the same principles of equity, as like provisions in trademark licenses and agreements. While nothing in this revision to the Lanham Act should be read as impairing a court's ability to apply existing principles of equity, where their application is appropriate, such licensing provisions are essential to preserving the public benefits of such marks without increasing the litigation and other transactional costs for certification mark owners. Similarly, certification and collective mark owners have the same remedies for infringement of their marks that are available to trademark owners.

Section 3 of the Lanham Act, 15 U.S.C. §1053, is amended in the same manner as Section 4 to maintain the parallel language of the two sections and to evidence congressional intent that all four marks protected by the Lanham Act are to be accorded the same rights and protections except as specifically provided by statute.

HONORING WORLD WAR II  
VETERANS

Mr. BAYH. Mr. President, throughout my service to the State of Indiana, I have been honored to represent thousands of Hoosier veterans who have fought bravely for our country. It is with great honor that I recognize the sacrifices of these three courageous men, Private First Class Leo Wilson Landess, Private First Class Robert Eugene Osborn, and Private First Class John Lee Reynolds, who were called to service in World War II to safeguard American freedom. These valiant young men defended our Nation and our liberty in the face of evil, before they had a chance to receive a high school diploma. It was more than 60 years ago that these three men left Governor I.P. Gray High School and were inducted into the Army. I applaud the Jay County High School Corporation for honoring these three World War II veterans, on June 12, 2004.

Their effort and unwavering commitment along with 120,000 other Hoosier World War II veterans, played a vital role in the long and difficult process of helping others enjoy freedom and democracy. By the end of the war, almost 13,000 Hoosier soldiers lost their lives. I am reminded by a quote by Douglas MacArthur, "The soldier, above all other people, prays for peace, for he must suffer and bear the deepest wounds and scars of war." I would like to express my deep appreciation for their dedicated service and the many sacrifices they made on behalf of our Nation.

MISSOURI RIVER DROUGHT  
CONSERVATION PLAN

Mr. JOHNSON. Mr. President, last Tuesday, September 14, the Senate Appropriations Committee reported out the Fiscal Year 2005 Interior Appropriations bill on a unanimous and bipartisan vote. The bill funds several of the Federal agencies that are responsible for managing millions of acres of land in South Dakota, including the U.S. Forest Service, the Fish and Wildlife Service, and the National Park Service. Included in that bill was a provision directing the Corps of Engineers to immediately implement the drought conservation measures outlined in the 2004 Missouri River Master Water Control Manual. This is an important provision that will better balance the competing uses of Missouri River water and, more importantly, bring a sense of equity and fair play to a process long-slanted toward a single group of navigation interests.

Perhaps no Federal agency has a more direct impact on South Dakotans than the U.S. Army Corps of Engineers. The Corps of Engineers has a tough job in South Dakota, balancing a host of competing and, it appears from time to time, mutually exclusive interests. However, on the key issue of managing the Missouri, the Corps has consistently come up short as a steward of America's longest river. With a current water storage rate of 35.9 million acre-feet, the main-stem Missouri River reservoirs are at the lowest level in history. The provision included in the Interior Appropriations bill faces up to this reality by taking a strong step toward conserving our water resources.

Unfortunately, yesterday, in an unprecedented maneuver to strike out and cancel the express will of the Appropriations Committee, a provision was inserted in the fiscal year 2005 Veterans, Housing and Urban Development, and Independent Agencies Appropriations bill that cancels out the drought conservation plan. The proponents of this new provision had already been rebuffed last week when attempting to change the original section. Surely we can find some common ground for the upstream states struggling with the lack of water flow. I expect an uphill battle, but I will do everything I can to fight for the needs of upstream states.

JUMPSTART OUR BUSINESS  
STRENGTH ACT

Mr. SMITH. Mr. President. I rise to speak about an important piece of legislation that is pending before Congress. The Jumpstart Our Business Strength, JOBS, Act, also known as FSC/ETI. This bill was passed by both the House and the Senate earlier this year and now awaits the appointment of conferees by the House of Representatives. As a Senate conferee, I am hopeful that we can move quickly toward a conference with the House and

complete action on FSC before the 108th Congress adjourns.

This bill has aptly been named the JOBS Act because of the direct impact it will have on businesses and employment in the United States. I believe this bill can strengthen the U.S. shipping industry. Over the past year I have worked closely with my colleagues, Senators TRENT LOTT, JOHN BREAUX and others, to provide critical tax reform for the U.S. maritime industry. I intend to work in conference to provide necessary relief to the maritime industry in Oregon and elsewhere throughout our country.

It is clear to me that the ability of the American shipowner to operate ships on a comparable economic basis as foreign competitors is vital to the competitiveness of the U.S.-flag industry. Yet United States shipping companies are subject to significantly higher taxes than their foreign-based competitors, particularly those that operate foreign vessels under what are commonly known as "flag-of-convenience" countries. Thus, American shipowners are increasingly unable to compete with their foreign-flag counterparts in the foreign trade of the United States.

Recently, many of the industrialized trading partners of the U.S., including the United Kingdom, Norway and Germany, have developed tonnage-based corporation tax regimes, known as "tonnage tax" regimes, to enable their fleets to compete fairly on the international stage. In a similar manner, our proposed tonnage tax provisions would authorize an alternative U.S. tax regime based upon the tonnage of a taxpayer's U.S.-flag fleet. That alternative regime would create a positive economic environment for U.S.-flag international shipping operations in line with that of other major U.S. trading partners.

This legislative provision is urgently needed to preserve U.S.-flag shipping and related employment opportunities for U.S. merchant mariners. At this time, there are only 89 U.S.-flag vessels engaged in the foreign trade that are operated by U.S. companies to which the tonnage tax regime would apply. Implementation of the tonnage tax regime is required now to prevent further reductions in an already decimated U.S.-flag commercial fleet and depleted U.S. mariner pool.

It is also important to the U.S. maritime industry that we enact an additional reform measure to defer U.S. tax on the foreign shipping income of a controlled foreign corporation, CFC—but only if that CFC is affiliated with a U.S. company that maintains a qualified fleet of at least two U.S.-flag commercial vessels. Generally, the U.S. does not tax foreign-source income earned by a CFC until that income is repatriated as a dividend to the U.S. shareholders of the CFC. However, a CFC's foreign shipping income is taxed to its U.S. shareholders in the year earned without regard to whether it is then, or ever, distributed to those shareholders.

I look forward to working with my Senate and House colleagues towards enactment of the FSC/ETI tax legislation and to ensure that these critical maritime provisions are included in the final version of the bill.

#### ROBERTO CLEMENTE DAY

Mr. SANTORUM. Mr. President, today I rise to speak about a topic that holds a special place in my life and the communities of Pennsylvania—baseball. Like our Nation's democracy, baseball is a part of our country's collective definition of community, history, and heroism.

The Pittsburgh Pirates and Philadelphia Phillies are recognized by fans for their hometown affiliation but more for their heroes. In Pennsylvania, we have plenty of players to boast about, but one in particular comes to mind, Roberto Clemente. Clemente is Pittsburgh's most revered hero. He was the first Latin-American to be inducted into the Hall of Fame and the first player for whom the Hall's required 5-year waiting period was waived. In honor of the humanitarian work in which he was so involved, the Roberto Clemente Foundation now serves Pittsburgh's inner-city through programs to instill responsible community behavior in disadvantaged youth, and to provide them with organized recreation. Clemente's example is an amazing illustration of how powerful professional sports heroes can be as role models.

Roberto Clemente Day was established in 2002 to increase awareness of the Roberto Clemente Award and the amount of time and effort its recipients dedicate towards community and charitable endeavors. Since 1971, Major League Baseball has annually presented an award that recognizes a player who best exemplifies the game of baseball through sportsmanship, community involvement, and positive contributions to his team. The award was named in honor of Clemente in 1973. The national recipient of the 2004 Roberto Clemente Award will be announced during the 2004 World Series. This year, September 22 has been designated as 2004 Roberto Clemente Day.

PNC Park in Pittsburgh will be among the many ballparks around the country that will hold a ceremony commemorating Roberto Clemente Day. As residents of Pittsburgh cross the Roberto Clemente Bridge, which spans the Allegheny River, may they remember the example that Roberto Clemente set for us all.

Roberto Clemente Walker was born in Barrio San Anton in Carolina, Puerto Rico, August 18, 1934. Roberto always excelled at track and field; however, his real love was baseball.

Clemente joined the Pittsburgh Pirates in 1955, where he played his entire 18-year Major League Baseball career from 1955 to 1972. Clemente is considered one of the finest outfielders to ever play professional baseball, amassing over 3,000 hits, 12 Golden Glove

Awards, a league MVP Award, and leading the Pittsburgh Pirates to World Series victories in 1960 and 1971.

Clemente was also a devoted father. With his wife Vera Cristina, he raised three sons: Roberto Jr., Luis Roberto, and Roberto Enrique. Proud of his heritage Roberto insisted that Vera give birth to all three sons in Puerto Rico.

I will always remember feeling deeply saddened upon hearing the news, on December 31, 1972, that Clemente had died in a tragic plane crash off the coast of Puerto Rico. The plane was taking medical, food, and clothing supplies to earthquake stricken Nicaragua. Clemente will always be remembered as one of the greatest humanitarians of all time.

Aside from playing baseball myself over the years, the culture of identifying with star baseball players and my hometown team is an inextricable part of my boyhood. As a young boy playing and watching baseball, I learned the value of hard work, the importance of teamwork, how to deal with success and failure, how to concentrate and stay focused on a goal, and how to look beyond personal achievement to something bigger than oneself. Roberto Clemente embodied all of these virtues.

As our Nation recognizes Hispanic Heritage Month during the month of September, this is an ideal time to honor this exceptional person and personal hero and his legacy that lives on through the recipients of the Roberto Clemente Award.

#### IN MEMORIAM TO STATE SENATOR HENRY J. MELLO

Mrs. BOXER. Mr. President, I take this opportunity to honor the memory of one of California's dedicated public servants, California State Senator Henry Mello. Senator Mello passed away on September 4, 2004. He was 80 years old.

Senator Mello was first elected to the Santa Cruz County Board of Supervisors in 1966, where he served for 8 years. In 1976, he was elected to the California State Assembly. After serving for two terms in the assembly, Senator Mello was elected to the California State Senate, where he spent the majority of his career in public service. During his tenure as a member of the California State Legislature, Senator Mello carried a record number of bills and resolutions—727—of which 456 were signed into law. Because of his successful leadership skills and his ability to work across partisan lines, Senator Mello served as the State Senate's majority whip from 1981 to 1992, and as the majority leader from 1992 to 1996.

Whether he was championing children's rights or seniors' rights, environmental issues or public education, residents of the central coast knew they had an advocate in Senator Mello. Among his many accomplishments in the State legislature, Senator Mello advocated for the establishment of the Monterey Bay National Marine Sanctuary; the creation of the California