Urban Affairs; to the Committee on Rules and Administration.

By Mr. HARKIN:

S. Res. 57. An original resolution authorizing expenditures by the Committee on Agriculture, Nutrition, and Forestry; from the Committee on Agriculture, Nutrition, and Forestry; to the Committee on Rules and Administration.

By Mr. INOUYE:

S. Res. 58. An original resolution authorizing expenditures by the Committee on Commerce, Science, and Transportation; from the Committee on Commerce, Science, and Transportation; to the Committee on Rules and Administration.

By Mr. BAUCUS:

S. Res. 59. An original resolution authorizing expenditures by the Committee on Finance; from the Committee on Finance; to the Committee on Rules and Administration.

By Mr. LIEBERMAN:

S. Res. 60. An original resolution authorizing expenditures by the Committee on Homeland Security and Governmental Affairs; from the Committee on Homeland Security and Governmental Affairs; to the Committee on Rules and Administration.

By Mr. KENNEDY (for himself, Mr. MCCAIN, Mr. AKAKA, Mr. BOND, Mr. BURR, Ms. CANTWELL, Mr. CARPER, Mrs. CLINTON, Mr. COCHRAN, Mr. COLEMAN, Mr. CONRAD, Mr. DODD, Mrs. DOLE, Mr. DOMENICI, Mr. DURBIN, Mr. ENSIGN, Mr. GRASSLEY, Mr. ISAKSON, Mr. KERRY, Ms. LANDRIEU, Mr. LEAHY, Mr. LEVIN, Ms. MURKOWSKI, Mr. PRYOR, Mr. SANDERS, Mr. REID, and Mr. SPECTER):

S. Res. 61. A resolution designating January 2007 as ''National Mentoring Month''; considered and agreed to.

By Mr. VITTER (for himself and Ms. LANDRIEU):

S. Res. 62. A resolution recognizing the goals of Catholic Schools Week and honoring the valuable contributions of Catholic schools in the United States; considered and agreed to.

By Mrs. FEINSTEIN:

S. Res. 63. An original resolution authorizing expenditures by the Committee on Rules and Administration; from the Committee on Rules and Administration; placed on the calendar.

By Mr. OBAMA (for himself, Mr. DURBIN, Mr. DODD, Mr. LUGAR, Mr. LIEBERMAN, and Mr. BAYH):

S. Con. Res. 5. A concurrent resolution honoring the life of Percy Lavon Julian, a pioneer in the field of organic chemistry and the first and only African-American chemist to be inducted into the National Academy of Sciences; to the Committee on the Judiciary.

By Mr. ENZI (for himself and Mr. THOMAS):

S. Con. Res. 6. A concurrent resolution expressing the sense of Congress that the National Museum of Wildlife Art, located in Jackson, Wyoming, should be designated as the ''National Museum of Wildlife Art of the United States''; to the Committee on Energy and Natural Resources.

By Mr. WARNER (for himself, Mr. NELSON of Nebraska, Ms. COLLINS, Mr. LEVIN, and Ms. SNOWE):

S. Con. Res. 7. A concurrent resolution expressing the sense of Congress on Iraq; to the Committee on Foreign Relations.

ADDITIONAL COSPONSORS

S. 101

At the request of Mr. STEVENS, the name of the Senator from South Dakota (Mr. THUNE) was added as a cosponsor of S. 101, a bill to update and reinvigorate universal service provided under the Communications Act of 1934.

S. 166

At the request of Mr. MCCAIN, the name of the Senator from Nevada (Mr. ENSIGN) was added as a cosponsor of S. 166, a bill to restrict any State from imposing a new discriminatory tax on cell phone services.

S. 233

At the request of Mr. KENNEDY, the name of the Senator from Connecticut (Mr. DODD) was added as a cosponsor of S. 233, a bill to prohibit the use of funds for an escalation of United States military forces in Iraq above the numbers existing as of January 9, 2007.

S. 268

At the request of Ms. CANTWELL, the name of the Senator from Oregon (Mr. SMITH) was added as a cosponsor of S. 268, a bill to designate the Ice Age Floods National Geologic Trail, and for other purposes.

S. 281

At the request of Mr. VITTER, the name of the Senator from Ohio (Mr. VOINOVICH) was added as a cosponsor of S. 281, a bill to amend title 44 of the United States Code, to provide for the suspension of fines under certain circumstances for first-time paperwork violations by small business concerns.

S. 287

At the request of Mr. KENNEDY, the name of the Senator from Connecticut (Mr. DODD) was added as a cosponsor of S. 287, a bill to prohibit the use of funds for an escalation of United States military forces in Iraq above the numbers existing as of January 9, 2007.

S. 380

At the request of Mr. WYDEN, the name of the Senator from West Virginia (Mr. ROCKEFELLER) was added as a cosponsor of S. 380, a bill to reauthorize the Secure Rural Schools and Community Self-Determination Act of 2000, and for other purposes.

S. 381

At the request of Mr. INOUYE, the name of the Senator from Delaware (Mr. CARPER) was added as a cosponsor of S. 381, a bill to establish a fact-finding Commission to extend the study of a prior Commission to investigate and determine facts and circumstances surrounding the relocation, internment, and deportation to Axis countries of Latin Americans of Japanese descent from December 1941 through February 1948, and the impact of those actions by the United States, and to recommend appropriate remedies, and for other purposes.

S. 408

At the request of Mr. CHAMBLISS, the name of the Senator from Montana (Mr. BAUCUS) was added as a cosponsor of S. 408, a bill to recognize the heritage of hunting and provide opportunities for continued hunting on Federal public land.

S. 430

At the request of Mr. BOND, the name of the Senator from Iowa (Mr. GRASSLEY) was added as a cosponsor of S. 430, a bill to amend title 10, United States Code, to enhance the national defense through empowerment of the Chief of the National Guard Bureau and the enhancement of the functions of the National Guard Bureau, and for other purposes.

At the request of Mr. LEAHY, the names of the Senator from Maryland (Ms. MIKULSKI), the Senator from West Virginia (Mr. ROCKEFELLER), the Senator from Montana (Mr. BAUCUS), the Senator from Massachusetts (Mr. KERRY) and the Senator from Oregon (Mr. WYDEN) were added as cosponsors of S. 430, supra.

S. 431

At the request of Mr. MCCAIN, the name of the Senator from Alaska (Mr. STEVENS) was added as a cosponsor of S. 431, a bill to require convicted sex offenders to register online identifiers, and for other purposes.

AMENDMENT NO. 115

At the request of Mr. KYL, the names of the Senator from Tennessee (Mr. ALEXANDER) and the Senator from Pennsylvania (Mr. SPECTER) were added as cosponsors of amendment No. 115 proposed to H.R. 2, a bill to amend the Fair Labor Standards Act of 1938 to provide for an increase in the Federal minimum wage.

AMENDMENT NO. 209

At the request of Mr. KYL, the name of the Senator from Pennsylvania (Mr. SPECTER) was added as a cosponsor of amendment No. 209 proposed to H.R. 2, a bill to amend the Fair Labor Standards Act of 1938 to provide for an increase in the Federal minimum wage.

STATEMENTS ON INTRODUCED BILLS AND JOINT RESOLUTIONS

By Mr. REID (for himself, Mrs. LINCOLN, Mr. BIDEN, Ms. MIKULSKI, Mrs. BOXER, Mr. DURBIN, Mr. SALAZAR, and Mr. BROWN):

S. 439. A bill to amend title 10, United States Code, to permit certain retired members of the uniformed services who have a service-connected disability to receive both disability compensation from the Department of Veterans Affairs for their disability and either retired pay by reason of their years of military service or Combat-Related Special Compensation; to the Committee on Armed Services.

Mr. REID. Mr. President, we are going to have a debate on Iraq, and it will be a historic debate about that war, a war that has demanded unparalleled sacrifices from our men and women in uniform.

While we have our disagreements with the President's conduct of the war, all 100 Senators stand side by side in supporting our troops. They have done everything asked of them, carrying out a difficult mission with honor and skill. We as a country owe the brave men and women in our military a debt of gratitude and have responsibility to ensure our veterans receive both the thanks of a grateful nation and the benefits they have earned,

and that is a subject I would like to discuss briefly this morning.

About 8 years ago, one of my staff came to me and said: Senator, do you realize that if a person is disabled in the military and retires from the military, they cannot draw on both their benefits? I said: What? And he repeated that. If you are in the military and you become disabled and you retire, you cannot draw both your benefits. I thought my staffer didn't know what he was talking about, but he did. That was the law in our country and had been for many years, and it was a wrong law. That law is still mostly in effect, and that is too bad.

When someone who is disabled retires from the U.S. military, he or she cannot draw on both their benefits. If you retire from any other branch of the Federal Government, such as the Bureau of Land Management, you can draw both your disability pay and your retirement pay but, no, not if you are in the military. These people have been robbed of their benefits, in my opinion, and I refer specifically to thousands of men and women who have been denied their retirement because of an unfair policy referred to as concurrent receipt.

By law, disabled veterans, as I have said, cannot collect disability pay and retirement pay at the same time. What does this mean? It means for every dollar of compensation a disabled veteran receives as a result of their injuries, they must sacrifice a dollar of their retirement pay they earned in the service of our Nation. In many cases, this ban takes away a veteran's full retirement pay, wiping away the benefits he or she earned in 20 or more years of service. That is wrong.

Concurrent receipt is a special tax on the men and women who keep us safe. Few veterans can afford to live on their retirement pay alone. Those burdened with disability face an even greater struggle, often denied any postservice work. They receive disability compensation to pay for pain, suffering, and loss of future earnings caused by a service-connected illness or injury. No other Federal retiree is forced to make forfeit of their retirement—only our disabled military retirees. This is not just an error, it is a disgrace.

Of course, concurrent receipt is not a new problem. I hope most everyone in the Senate knows about it. This is the seventh year I have introduced legislation to give disabled veterans the support they have earned, and I will continue fighting until we succeed, ending this unacceptable policy.

I first of all want to suggest that the two managers of the Defense bill, every year since I have worked on this, have been Senator WARNER and Senator LEVIN, and they have helped me. I appreciate that very much. They have been thoughtful and understanding in their approach to this issue. What has happened these past 7 years is good but not really good. We have chipped away at this unfair policy of concurrent receipt.

In 2000, I introduced legislation to eliminate this unfair policy for the first time. I did it at the end of the 106th Congress. This legislation passed the Senate but was removed by the House during conference. So I reintroduced the legislation in the 107th Congress, in both 2001 and 2002. Unfortunately, it was once again adopted by the Senate but removed in conference.

In 2003, I proposed legislation to allow disabled veterans with at least a 50-percent disability rating to become eligible for full concurrent receipt over a 10-year phase-in period. Despite veto threats from the Bush administration, Congress passed this very important version of concurrent receipt.

In 2004, I took it a step further. I introduced legislation to eliminate the 10-year phase-in period for veterans with a 100-percent disability. The motivation here was to get concurrent receipt to the most severely disabled veterans. We thought many of these veterans would never see the benefits with a 10-year phase-in. They are old World War II veterans, where the average age is well over 80 now, and to think they would have to wait 10 years for a phase-in isn't very fair.

In 2005, we focused on the most severely disabled veterans and successfully eliminated the 10-year phase-in for veterans listed as unemployable. I was pleased with the passage of that 2005 amendment but disappointed that the conference committee chose not to enact this valuable legislation for veterans rated as unemployable until 2009. So in 2006, I sought to get unemployable veterans immediate relief, but we didn't act. Congress didn't act.

So here we are in 2007, back at it again. Today, concurrent receipt remains one of my highest priorities. It is a priority, I believe, in fairness. We need to continue to chip away at this policy, and I am committed to that goal 100 percent, so that 100 percent of disabled veterans get the money they earn in being part of the great fighting force of this Nation.

We are blessed in this country to be defended by an All-Volunteer Army. These patriots put their lives and safety on the line because they love this country. I believe it is time for this country and this Congress to repay their service and sacrifice, and that is why I am reintroducing today the Retired Pay Restoration Act of 2007.

Mr. President, I ask unanimous consent that the text of this legislation 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. 439

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 ''Retired Pay Restoration Act of 2007''.

SEC. 2. ELIGIBILITY FOR PAYMENT OF BOTH RETIRED PAY AND VETERANS' DISABILITY COMPENSATION FOR CERTAIN MILITARY RETIREES WITH COMPENSABLE SERVICE-CONNECTED DISABILITIES.

(a) EXTENSION OF CONCURRENT RECEIPT AUTHORITY TO RETIREES WITH SERVICE-CONNECTED DISABILITIES RATED LESS THAN 50 PERCENT.—

(1) REPEAL OF 50 PERCENT REQUIREMENT.—Section 1414 of title 10, United States Code, is amended by striking paragraph (2) of subsection (a).

(2) COMPUTATION.—Paragraph (1) of subsection (c) of such section is amended by adding at the end the following new subparagraph:

''(G) For a month for which the retiree receives veterans' disability compensation for a disability rated as 40 percent or less or has a service-connected disability rated as zero percent, $0.''.

(b) REPEAL OF PHASE-IN OF CONCURRENT RECEIPT FOR RETIREES WITH SERVICE-CONNECTED DISABILITIES RATED AS TOTAL.—Subsection (a)(1) of such section is amended by striking ''except that'' and all that follows and inserting ''except—

''(A) in the case of a qualified retiree receiving veterans' disability compensation for a disability rated as 100 percent, payment of retired pay to such veteran is subject to subsection (c) only during the period beginning on January 1, 2004, and ending on December 31, 2004; and

''(B) in the case of a qualified retiree receiving veterans' disability compensation for a disability rated as total by reason of unemployability, payment of retired pay to such veteran is subject to subsection (c) only during the period beginning on January 1, 2004, and ending on December 31, 2007.''.

(c) CLERICAL AMENDMENTS.—

(1) The heading for section 1414 of such title is amended to read as follows:

''§ 1414. Members eligible for retired pay who are also eligible for veterans' disability compensation: concurrent payment of retired pay and disability compensation''.

(2) The item relating to such section in the table of sections at the beginning of chapter 71 of such title is amended to read as follows:

''1414. Members eligible for retired pay who are also eligible for veterans' disability compensation: concurrent payment of retired pay and disability compensation.''.

(d) EFFECTIVE DATE.—The amendments made by this section shall take effect on January 1, 2008, and shall apply to payments for months beginning on or after that date.

SEC. 3. COORDINATION OF SERVICE ELIGIBILITY FOR COMBAT-RELATED SPECIAL COMPENSATION AND CONCURRENT RECEIPT.

(a) ELIGIBILITY FOR TERA RETIREES.—Subsection (c) of section 1413a of title 10, United States Code, is amended by striking ''entitled to retired pay who—'' and inserting ''who—

''(1) is entitled to retired pay, other than a member retired under chapter 61 of this title with less than 20 years of service creditable under section 1405 of this title and less than 20 years of service computed under section 12732 of this title; and

''(2) has a combat-related disability.''.

(b) AMENDMENTS TO STANDARDIZE SIMILAR PROVISIONS.—

(1) CLERICAL AMENDMENT.—The heading for paragraph (3) of section 1413a(b) of such title is amended by striking ''RULES'' and inserting ''RULE''.

(2) QUALIFIED RETIREES.—Subsection (a) of section 1414 of such title, as amended by section 2(a), is amended—

(A) by striking ''a member or'' and all that follows through ''retiree'')'' and inserting ''a qualified retiree''; and

(B) by adding at the end the following new paragraph:

''(2) QUALIFIED RETIREES.—For purposes of this section, a qualified retiree, with respect to any month, is a member or former member of the uniformed services who—

''(A) is entitled to retired pay, other than in the case of a member retired under chapter 61 of this title with less than 20 years of service creditable under section 1405 of this title and less than 20 years of service computed under section 12732 of this title; and

''(B) is also entitled for that month to veterans' disability compensation.''.

(3) DISABILITY RETIREES.—Subsection (b) of section 1414 of such title is amended—

(A) by striking ''SPECIAL RULES'' in the subsection heading and all that follows through ''is subject to'' and inserting ''SPECIAL RULE FOR CHAPTER 61 DISABILITY RETIREES.—In the case of a qualified retiree who is retired under chapter 61 of this title, the retired pay of the member is subject to''; and

(B) by striking paragraph (2).

(c) EFFECTIVE DATE.—The amendments made by this section shall take effect on January 1, 2008, and shall apply to payments for months beginning on or after that date.

By Mr. DURBIN (for himself and Mr. OBAMA):

S. 441. A bill to permit certain school districts in Illinois to be reconstituted for purposes of determining assistance under the Impact Aid program; to the Committee on Health, Education, Labor, and Pensions.

Mr. DURBIN. 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. 441

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

SECTION 1. ELIGIBILITY FOR IMPACT AID PAYMENT.

(a) LOCAL EDUCATIONAL AGENCIES.—Notwithstanding section 8013(9)(B) of the Elementary and Secondary Education Act of 1965 (20 U.S.C. 7713(9)(B)), North Chicago Community Unit School District 187, North Shore District 112, and Township High School District 113 in Lake County, Illinois, and Glenview Public School District 34 and Glenbrook High School District 225 in Cook County, Illinois, shall be considered local educational agencies as such term is used in and for purposes of title VIII of such Act.

(b) COMPUTATION.—Notwithstanding any other provision of law, federally connected children (as determined under section 8003(a) of the Elementary and Secondary Education Act of 1965 (20 U.S.C. 7703(a))) who are in attendance in the North Shore District 112, Township High School District 113, Glenview Public School District 34, and Glenbrook High School District 225 described in subsection (a), shall be considered to be in attendance in the North Chicago Community Unit School District 187 described in subsection (a) for purposes of computing the amount that the North Chicago Community Unit School District 187 is eligible to receive under subsection (b) or (d) of such section if—

(1) such school districts have entered into an agreement for such students to be so considered and for the equitable apportionment among all such school districts of any amount received by the North Chicago Community Unit School District 187 under such section; and

(2) any amount apportioned among all such school districts pursuant to paragraph (1) is used by such school districts only for the direct provision of educational services.

By Mr. DURBIN (for himself, Mr. SPECTER, Mr. LEAHY, Mr. SMITH, Mr. KERRY, and Ms. COLLINS):

S. 442. A bill to provide for loan repayment for prosecutors and public defenders; to the Committee on the Judiciary.

Mr. DURBIN. Mr. President, I rise today to introduce the John R. Justice Prosecutors and Defenders Incentive Act of 2007. I am honored to have the support and cosponsorship of Senator LEAHY and Senator SPECTER, the chairman and ranking member of the Judiciary Committee, on this important legislation. I look forward to working closely with Chairman LEAHY and Ranking Member SPECTER to advance it through the Judiciary Committee and secure its enactment into law. I also appreciate the cosponsorship of Senator SMITH, Senator KERRY and Senator COLLINS on this bipartisan bill.

Our bill seeks to enhance our criminal justice system by encouraging talented law school graduates to serve as criminal prosecutors and public defenders. The bill would establish a student loan repayment program for qualified attorneys who agree to remain employed for at least 3 years as State or local criminal prosecutors, or as State, local, or Federal public defenders in criminal cases.

This legislation is supported by the American Bar Association, the National District Attorneys Association, the National Association of Prosecutor Coordinators, the National Legal Aid and Defender Association, and the National Association of Criminal Defense Lawyers.

For our criminal justice system to function effectively, we need to have a sufficient supply of dedicated and competent attorneys working in prosecutor and public defender offices. However, many qualified law school graduates who have a strong motivation to work in the public sector find it economically impossible due to the overwhelming burden of student loan debt.

The legal profession and our communities pay a severe price when law graduates are shut out from pursuing public service careers due to educational debt. When prosecutor and public defender offices cannot attract new lawyers or keep experienced ones, their ability to protect the public interest is compromised. Such offices may find themselves unable to take on new cases due to staffing shortages, and their existing staff may be forced to handle unmanageable workloads. Cases may suffer from lengthy and unnecessary delays, and some cases may be mishandled by inexperienced or overworked attorneys. As a result, innocent people may be sent to jail, and criminals may go free.

Our bill, the John R. Justice Prosecutors and Defenders Incentive Act, is designed to help remedy some of these problems. The availability of student loan repayment can be a powerful incentive for attracting talented new lawyers to public service employment. Our proposal complements loan forgiveness options that currently exist for Federal prosecutors. Passage of this bill will help make prosecutor and public defender jobs at all levels of government more attractive and financially viable for law school graduates who have incurred significant educational debt.

Our bill is named after the late John R. Justice, former president of the National District Attorneys Association and a distinguished prosecutor from the State of South Carolina. John Justice was instrumental in promoting student loan repayment efforts for law school graduates seeking to work in public service. This bill is a fitting tribute to his dedicated efforts.

The need for this legislation is evident. In recent years, the costs of a law school education have skyrocketed. Researchers found that tuition increased about 340 percent from 1985 to 2002 for private law school students and for out-of-State students at public law schools. In-State students at public law schools saw their tuition jump about 500 percent during that time. In 2005, the average annual tuition was $28,900 for private law schools, $22,987 for nonresident students at public law schools, and $13,145 for resident students at public law schools. These tuition costs do not include the costs of food, lodging, books, fees and personal expenses over 3 years of law school.

Unsurprisingly, the vast majority of law students—over 80 percent—must borrow funds to finance their legal education. According to the American Bar Association, the average total cumulative educational debt for law school graduates in the class of 2005 was $78,763 for private schools and $51,056 for public schools. Two-thirds of law students generally carry additional unpaid debt from their undergraduate studies. These education debts are serious financial obligations that must be repaid, as any default on a loan triggers significant consequences.

Many law students graduate with a deep commitment to pursuing a career in public service. However, they need a level of income sufficient to meet the demands of their educational loan liabilities, and public service salaries have not kept up with rising law school debt burdens. From 1985 to 2002, while law school tuition increased 340 percent for private law school students and 500 percent for in-state students at public law schools, salaries for public service lawyers such as prosecutors and public defenders increased by just 70 percent. According to the National Association for Law Placement, NALP, the median entry-level salary for public defenders is $43,000. With 11 to 15 years of experience, the median salary

increases only to $65,500. The salary progression for State prosecuting attorneys is similar, starting at around $46,000 and progressing to about $68,000 for those with 11 to 15 years of experience.

Many law school graduates can earn much more and repay their student loans much faster by entering the private sector. According to a NALP survey, in 2005 the median salary for first-year attorneys at law firms ranged from $67,500 in firms of 2 to 25 attorneys to $135,000 in firms of 500 attorneys or more. The median first-year salary for all firms participating in the survey was $100,000. When choosing between a private sector job and a job as a prosecutor or defender, talented law graduates with large debt burdens must take into consideration this salary differential.

It is clear that large student debt deters many law graduates from pursuing public service careers. According to a national survey of 1,622 students from 117 law schools conducted by Equal Justice Works, the Partnership for Public Service, and NALP in 2002, 66 percent of respondents stated that law school debt prevented them from considering a public interest or government job.

Some law graduates initially accept public service jobs despite their high debt burdens. However, many attorneys cannot repay their loan obligations as well as pay all their other living expenses on a government salary. Attorneys who begin careers in public service, and who would like to remain, frequently leave after a few years when they find their debts are hindering their ability to provide for themselves, much less support their families or save for retirement.

Many public service employers report having a difficult time attracting and retaining talented law graduates. Prosecutor and public defender offices across the country have vacancies they cannot fill because new law graduates cannot afford to work for them. Alternatively, those who do hire law graduates find that, because of educational debt burdens, those whom they do hire leave just at the point when they have acquired the experience to provide the most valuable services. According to a Bureau of Justice Statistics survey, 24 percent of state prosecutors' offices reported problems in 2005 with recruiting new attorneys, and 35 percent reported problems in retaining attorneys. Another survey administered by Equal Justice Works and the National Legal Aid & Defender Association in 2002 found that over 60 percent of public interest law employers, including state and local prosecutor and public defender offices, reported difficulty in attorney recruitment and retention.

I recently received a letter from Bernard Murray, President of the Prosecutors Bar Association and Chief of the Criminal Prosecutions Bureau for the Cook County State's Attorney's Office in Chicago. He wrote: ''[W]e are faced with enormous hurdles in attracting first-rate candidates to pursue a career with the Cook County State's Attorney's Office. We simply cannot afford to pay new assistants a salary high enough to offset the enormous debt load that follows them from their law school graduation.''

His letter also stated: ''We are observing an exodus of talent at about the three to five year experience mark in the office when assistants are no longer able to postpone life events such as marriage, home ownership, and starting a family. We are losing much of our best talent before they even have a chance to put their skills to use in felony cases.''

I also received a copy of a letter from Michael Judge, Chief Defender of the Los Angeles County Public Defender Office, the oldest and largest such office in the Nation. His letter states the following about his office's efforts to recruit new lawyers: ''It became necessary to expand the ambit of recruiting from locally to statewide, to the western region of the country and now to the entire nation to ensure the success of our recruiting in the face of the deterrent of crushing student loan debt. . . . In some sense we are 'poaching' in the territory of other defender offices. . . . I have experienced more 'turndowns' of employment offers in the recent past than during my first 9 or 10 years as Chief Defender. I attribute that to the 'ice cold water in the face syndrome' experienced by motivated candidates making the final net calculations and discovering a defender career can be an adventure in deficit financing.''

It harms the public interest when communities face a shortage of attorneys who can effectively prosecute cases and provide criminal defendants with their constitutional right to counsel. Sadly, these situations occur all too frequently. We can—and should—do more to help prosecutor and public defender offices recruit and retain attorneys in the face of increasing student debt burdens and higher private sector salaries.

Our legislation would help by establishing, within the Department of Justice, a program of student loan repayment for borrowers who agree to remain employed for at least three years as State or local criminal prosecutors, or as State, local, or Federal public defenders in criminal cases. It would allow eligible attorneys to receive student loan debt repayments of up to $10,000 per year, with a maximum aggregate over time of $60,000. The bill would cover student loans made, insured, or guaranteed under the Higher Education Act of 1965, including consolidation loans.

Under our bill, repayment benefits for public sector attorneys would be made available on a first-come, first-served basis, and would be subject to the availability of appropriations. Priority would be given to borrowers who received repayment benefits for the preceding fiscal year and who have completed less than three years of the first required service period. Borrowers could enter into an additional agreement, after the required three-year period, for a successive period of service which may be less than three years. Attorneys who do not complete their required period of service would be required to repay the government.

In addition to covering those who agree to serve in State and local prosecutor and defender offices, our bill complements existing loan forgiveness programs that are currently available for Federal prosecutors by making loan relief available to Federal public defenders as well.

Our bill is modeled on a loan repayment program that has been created for Federal executive branch employees and that has enjoyed growing success. Federal law currently permits Federal executive branch agencies to repay their employees' student loans, up to $10,000 in a year, and up to a lifetime maximum of $60,000. In exchange, the employee must agree to remain with the agency for at least three years. According to the Office of Personnel Management (OPM), during fiscal year 2005 there were 479 lawyers working in Federal agencies who received loan repayments under this program, including 242 lawyers for the Securities and Exchange Commission and 85 attorneys for the Department of Justice. According to OPM, Federal agencies across the board say that the program has been of tremendous benefit in recruiting and retaining attorneys.

As I have worked on behalf of our legislation, I have been moved by the personal stories of attorneys who have been trying to embark on a career of public service but have been struggling because of student loans. One compelling letter I received came from Aisha Cornelius, an Assistant State's Attorney in Cook County, Illinois. Her letter said the following: ''I am a full-time prosecutor in Cook County. I wanted this job because I desired to use my law degree for public service. Although making a lot of money was not my primary goal, I had hoped at least for financial stability. This, however, is difficult to accomplish as my student loan payments take up a considerable amount of my income. I have more than $100,000 in student loan debt. I am also a single mother with a five-year-old daughter in kindergarten. In order to work, I have to pay for before- and after-school care for her. . . . I depleted my savings while studying for the bar exam last year and I essentially live check to check. In order to supplement my income, I sell cosmetics and skin care. I am also in the process of applying for a part-time evening teaching position. I love my job and serving the greater good. The only reason I would ever leave public service is if I could no longer afford to stay. This is much more of a possibility than I would like it to be. Loan repayment assistance would help me stay longer in a position

that allows me to serve the community during the day while giving me the freedom and peace of mind to focus [on] my daughter at night.''

I appreciate Ms. Cornelius's willingness to share her story with me. By enacting and funding this legislation, we can take a meaningful step toward alleviating some of the financial burden for attorneys such as Ms. Cornelius who choose careers as criminal prosecutors and public defenders.

I know there are many other law graduates who, like Aisha Cornelius, want to apply their legal training and develop their skills in the public sector, but are deterred by the weight of student loan obligations. Passage of the John R. Justice Prosecutors and Defenders Incentive Act will help them make their career dreams a reality. I urge its swift adoption.

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. 442

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 ''John R. Justice Prosecutors and Defenders Incentive Act of 2007''.

SEC. 2. LOAN REPAYMENT FOR PROSECUTORS AND DEFENDERS.

Title I of the Omnibus Crime Control and Safe Streets Act of 1968 (42 U.S.C. 3711 et seq.) is amended by adding at the end the following:

''PART JJ—LOAN REPAYMENT FOR PROSECUTORS AND PUBLIC DEFENDERS

''SEC. 3111. GRANT AUTHORIZATION.

''(a) PURPOSE.—The purpose of this section is to encourage qualified individuals to enter and continue employment as prosecutors and public defenders.

''(b) DEFINITIONS.—In this section:

''(1) PROSECUTOR.—The term 'prosecutor' means a full-time employee of a State or local agency who—

''(A) is continually licensed to practice law; and

''(B) prosecutes criminal cases at the State or local level.

''(2) PUBLIC DEFENDER.—The term 'public defender' means an attorney who—

''(A) is continually licensed to practice law; and

''(B) is—

''(i) a full-time employee of a State or local agency or a nonprofit organization operating under a contract with a State or unit of local government, that provides legal representation to indigent persons in criminal cases; or

''(ii) employed as a full-time Federal defender attorney in a defender organization established pursuant to subsection (g) of section 3006A of title 18, United States Code, that provides legal representation to indigent persons in criminal cases.

''(3) STUDENT LOAN.—The term 'student loan' means—

''(A) a loan made, insured, or guaranteed under part B of title IV of the Higher Education Act of 1965 (20 U.S.C. 1071 et seq.);

''(B) a loan made under part D or E of title IV of the Higher Education Act of 1965 (20 U.S.C. 1087a et seq. and 1087aa et seq.); and

''(C) a loan made under section 428C or 455(g) of the Higher Education Act of 1965 (20 U.S.C. 1078–3 and 1087e(g)) to the extent that such loan was used to repay a Federal Direct Stafford Loan, a Federal Direct Unsubsidized Stafford Loan, or a loan made under section 428 or 428H of such Act.

''(c) PROGRAM AUTHORIZED.—The Attorney General shall establish a program by which the Department of Justice shall assume the obligation to repay a student loan, by direct payments on behalf of a borrower to the holder of such loan, in accordance with subsection (d), for any borrower who—

''(1) is employed as a prosecutor or public defender; and

''(2) is not in default on a loan for which the borrower seeks forgiveness.

''(d) TERMS OF AGREEMENT.—

''(1) IN GENERAL.—To be eligible to receive repayment benefits under subsection (c), a borrower shall enter into a written agreement that specifies that—

''(A) the borrower will remain employed as a prosecutor or public defender for a required period of service of not less than 3 years, unless involuntarily separated from that employment;

''(B) if the borrower is involuntarily separated from employment on account of misconduct, or voluntarily separates from employment, before the end of the period specified in the agreement, the borrower will repay the Attorney General the amount of any benefits received by such employee under this section;

''(C) if the borrower is required to repay an amount to the Attorney General under subparagraph (B) and fails to repay such amount, a sum equal to that amount shall be recoverable by the Federal Government from the employee (or such employee's estate, if applicable) by such methods as are provided by law for the recovery of amounts owed to the Federal Government;

''(D) the Attorney General may waive, in whole or in part, a right of recovery under this subsection if it is shown that recovery would be against equity and good conscience or against the public interest; and

''(E) the Attorney General shall make student loan payments under this section for the period of the agreement, subject to the availability of appropriations.

''(2) REPAYMENTS.—

''(A) IN GENERAL.—Any amount repaid by, or recovered from, an individual or the estate of an individual under this subsection shall be credited to the appropriation account from which the amount involved was originally paid.

''(B) MERGER.—Any amount credited under subparagraph (A) shall be merged with other sums in such account and shall be available for the same purposes and period, and subject to the same limitations, if any, as the sums with which the amount was merged.

''(3) LIMITATIONS.—

''(A) STUDENT LOAN PAYMENT AMOUNT.—Student loan repayments made by the Attorney General under this section shall be made subject to such terms, limitations, or conditions as may be mutually agreed upon by the borrower and the Attorney General in an agreement under paragraph (1), except that the amount paid by the Attorney General under this section shall not exceed—

''(i) $10,000 for any borrower in any calendar year; or

''(ii) an aggregate total of $60,000 in the case of any borrower.

''(B) BEGINNING OF PAYMENTS.—Nothing in this section shall authorize the Attorney General to pay any amount to reimburse a borrower for any repayments made by such borrower prior to the date on which the Attorney General entered into an agreement with the borrower under this subsection.

''(e) ADDITIONAL AGREEMENTS.—

''(1) IN GENERAL.—On completion of the required period of service under an agreement under subsection (d), the borrower and the Attorney General may, subject to paragraph (2), enter into an additional agreement in accordance with subsection (d).

''(2) TERM.—An agreement entered into under paragraph (1) may require the borrower to remain employed as a prosecutor or public defender for less than 3 years.

''(f) AWARD BASIS; PRIORITY.—

''(1) AWARD BASIS.—Subject to paragraph (2), the Attorney General shall provide repayment benefits under this section on a first-come, first-served basis, and subject to the availability of appropriations.

''(2) PRIORITY.—The Attorney General shall give priority in providing repayment benefits under this section in any fiscal year to a borrower who—

''(A) received repayment benefits under this section during the preceding fiscal year; and

''(B) has completed less than 3 years of the first required period of service specified for the borrower in an agreement entered into under subsection (d).

''(g) REGULATIONS.—The Attorney General is authorized to issue such regulations as may be necessary to carry out the provisions of this section.

''(h) AUTHORIZATION OF APPROPRIATIONS.—There are authorized to be appropriated to carry out this section $25,000,000 for fiscal year 2008 and such sums as may be necessary for each succeeding fiscal year.''.

By Mr. DURBIN:

S. 446. A bill to amend the Public Health Service Act to authorize capitation grants to increase the number of nursing faculty and students, and for other purposes; to the Committee on Health, Education, Labor, and Pensions.

Mr. DURBIN. 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. 446

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 ''Nurse Education, Expansion, and Development Act of 2007''.

SEC. 2. FINDINGS.

The Congress finds as follows:

(1) While the Nurse Reinvestment Act (Public Law 107–205) helped to increase applications to schools of nursing by 125 percent, schools of nursing have been unable to accommodate the influx of interested students because they have an insufficient number of nurse educators. It is estimated that—

(A) in the 2006–2007 school year—

(i) 66.6 percent of schools of nursing had from 1 to 18 vacant faculty positions; and

(ii) an additional 16.7 percent of schools of nursing needed additional faculty, but lacked the resources needed to add more positions; and

(B) 41,683 eligible candidates were denied admission to schools of nursing in 2005, primarily due to an insufficient number of faculty members.

(2) A growing number of nurses with doctoral degrees are choosing careers outside of education. Over the last few years, 22.5 percent of doctoral nursing graduates reported seeking employment outside the education profession.

(3) In 2006 the average age of nurse faculty at retirement is 63.1 years. With the average age of doctorally-prepared nurse faculty at 54.7 years in 2005, a wave of retirements is expected within the next 10 years.

(4) Master's and doctoral programs in nursing are not producing a large enough pool of potential nurse educators to meet the projected demand for nurses over the next 10 years. While graduations from master's and doctoral programs in nursing rose by 12.8 percent (or 1,369 graduates) and 13.1 percent (or 56 graduates), respectively, in the 2005–2006 school year, projections still demonstrate a shortage of nurse faculty. Given current trends, there will be at least 2,616 unfilled faculty positions in 2012.

(5) According to the February 2004 Monthly Labor Review of the Bureau of Labor Statistics, more than 1,000,000 new and replacement nurses will be needed by 2012.

SEC. 3. CAPITATION GRANTS TO INCREASE THE NUMBER OF NURSING FACULTY AND STUDENTS.

(a) GRANTS.—Part D of title VIII of the Public Health Service Act (42 U.S.C. 296p) is amended by adding at the end the following:

"SEC. 832. CAPITATION GRANTS.

''(a) IN GENERAL.—For the purpose described in subsection (b), the Secretary, acting through the Health Resources and Services Administration, shall award a grant each fiscal year in an amount determined in accordance with subsection (c) to each eligible school of nursing that submits an application in accordance with this section.

''(b) PURPOSE.—A funding agreement for a grant under this section is that the eligible school of nursing involved will expend the grant to increase the number of nursing faculty and students at the school, including by hiring new faculty, retaining current faculty, purchasing educational equipment and audiovisual laboratories, enhancing clinical laboratories, repairing and expanding infrastructure, or recruiting students.

''(c) GRANT COMPUTATION.—

''(1) AMOUNT PER STUDENT.—Subject to paragraph (2), the amount of a grant to an eligible school of nursing under this section for a fiscal year shall be the total of the following:

''(A) $1,800 for each full-time or part-time student who is enrolled at the school in a graduate program in nursing that—

''(i) leads to a master's degree, a doctoral degree, or an equivalent degree; and

''(ii) prepares individuals to serve as faculty through additional course work in education and ensuring competency in an advanced practice area.

''(B) $1,405 for each full-time or part-time student who—

''(i) is enrolled at the school in a program in nursing leading to a bachelor of science degree, a bachelor of nursing degree, a graduate degree in nursing if such program does not meet the requirements of subparagraph (A), or an equivalent degree; and

''(ii) has not more than 3 years of academic credits remaining in the program.

''(C) $966 for each full-time or part-time student who is enrolled at the school in a program in nursing leading to an associate degree in nursing or an equivalent degree.

''(2) LIMITATION.—In calculating the amount of a grant to a school under paragraph (1), the Secretary may not make a payment with respect to a particular student—

''(A) for more than 2 fiscal years in the case of a student described in paragraph (1)(A) who is enrolled in a graduate program in nursing leading to a master's degree or an equivalent degree;

''(B) for more than 4 fiscal years in the case of a student described in paragraph (1)(A) who is enrolled in a graduate program in nursing leading to a doctoral degree or an equivalent degree;

''(C) for more than 3 fiscal years in the case of a student described in paragraph (1)(B); or

''(D) for more than 2 fiscal years in the case of a student described in paragraph (1)(C).

''(d) ELIGIBILITY.—For purposes of this section, the term 'eligible school of nursing' means a school of nursing that—

''(1) is accredited by a nursing accrediting agency recognized by the Secretary of Education;

''(2) has a passage rate on the National Council Licensure Examination for Registered Nurses of not less than 80 percent for each of the 3 school years preceding submission of the grant application; and

''(3) has a graduation rate (based on the number of students in a class who graduate relative to, for a baccalaureate program, the number of students who were enrolled in the class at the beginning of junior year or, for an associate degree program, the number of students who were enrolled in the class at the end of the first year) of not less than 80 percent for each of the 3 school years preceding submission of the grant application.

''(e) REQUIREMENTS.—The Secretary may award a grant under this section to an eligible school of nursing only if the school gives assurances satisfactory to the Secretary that, for each school year for which the grant is awarded, the school will comply with the following:

''(1) The school will maintain a passage rate on the National Council Licensure Examination for Registered Nurses of not less than 80 percent.

''(2) The school will maintain a graduation rate (as described in subsection (d)(3)) of not less than 80 percent.

''(3)(A) Subject to subparagraphs (B) and (C), the first-year enrollment of full-time nursing students in the school will exceed such enrollment for the preceding school year by 5 percent or 5 students, whichever is greater.

''(B) Subparagraph (A) does not apply to the first school year for which a school receives a grant under this section.

''(C) With respect to any school year, the Secretary may waive application of subparagraph (A) if—

''(i) the physical facilities at the school involved limit the school from enrolling additional students; or

''(ii) the school has increased enrollment in the school (as described in subparagraph (A)) for each of the 2 preceding school years.

''(4) Not later than 1 year after receipt of the grant, the school will formulate and implement a plan to accomplish at least 2 of the following:

''(A) Establishing or significantly expanding an accelerated baccalaureate degree nursing program designed to graduate new nurses in 12 to 18 months.

''(B) Establishing cooperative intradisciplinary education among schools of nursing with a view toward shared use of technological resources, including information technology.

''(C) Establishing cooperative interdisciplinary training between schools of nursing and schools of allied health, medicine, dentistry, osteopathy, optometry, podiatry, pharmacy, public health, or veterinary medicine, including training for the use of the interdisciplinary team approach to the delivery of health services.

''(D) Integrating core competencies on evidence-based practice, quality improvements, and patient-centered care.

''(E) Increasing admissions, enrollment, and retention of qualified individuals who are financially disadvantaged.

''(F) Increasing enrollment of minority and diverse student populations.

''(G) Increasing enrollment of new graduate baccalaureate nursing students in graduate programs that educate nurse faculty members.

''(H) Developing post-baccalaureate residency programs to prepare nurses for practice in specialty areas where nursing shortages are most severe.

''(I) Increasing integration of geriatric content into the core curriculum.

''(J) Partnering with economically disadvantaged communities to provide nursing education.

''(K) Expanding the ability of nurse managed health centers to provide clinical education training sites to nursing students.

''(5) The school will submit an annual report to the Secretary that includes updated information on the school with respect to student enrollment, student retention, graduation rates, passage rates on the National Council Licensure Examination for Registered Nurses, the number of graduates employed as nursing faculty or nursing care providers within 12 months of graduation, and the number of students who are accepted into graduate programs for further nursing education.

''(6) The school will allow the Secretary to make on-site inspections, and will comply with the Secretary's requests for information, to determine the extent to which the school is complying with the requirements of this section.

''(f) REPORTS TO CONGRESS.—The Secretary shall evaluate the results of grants under this section and submit to the Congress—

''(1) not later than 18 months after the date of the enactment of this section, an interim report on such results; and

''(2) not later than the end of fiscal year 2010, a final report on such results.

''(g) APPLICATION.—To seek a grant under this section, a school nursing shall submit an application to the Secretary at such time, in such manner, and containing such information and assurances as the Secretary may require.

''(h) AUTHORIZATION OF APPROPRIATIONS.—

''(1) IN GENERAL.—For the costs of carrying out this section (except the costs described in paragraph (2)), there are authorized to be appropriated $75,000,000 for fiscal year 2008, $85,000,000 for fiscal year 2009, and $95,000,000 for fiscal year 2010.

''(2) ADMINISTRATIVE COSTS.—For the costs of administering this section, including the costs of evaluating the results of grants and submitting reports to the Congress, there are authorized to be appropriated such sums as may be necessary for each of fiscal years 2008, 2009, and 2010.''.

(b) GAO STUDY.—

(1) IN GENERAL.—Not later than 1 year after the date of the enactment of this Act, the Comptroller General of the United States shall conduct a study and submit a report to the Congress on ways to increase participation in the nurse faculty profession.

(2) CONTENTS OF REPORT.—The report required by paragraph (1) shall include the following:

(A) A discussion of the master's degree and doctoral degree programs that are successful in placing graduates as faculty in schools of nursing.

(B) An examination of compensation disparities throughout the nursing profession and compensation disparities between higher education instructional faculty generally and higher education instructional nursing faculty.

By Mr. FEINGOLD:

S. 447. A bill to abolish the death penalty under Federal law; to the Committee on the Judiciary.

Mr. FEINGOLD. Mr. President, today I am introducing the Federal Death Penalty Abolition Act of 2007. This bill would abolish the death penalty at the Federal level. It would put an immediate halt to executions and forbid the imposition of the death penalty as a sentence for violations of Federal law.

Since 1976, when the death penalty was reinstated by the Supreme Court, there have been 1,060 executions across the country, including three at the Federal level. During that same time period, 123 people on death row have been exonerated and released from death row. These people never should have been convicted in the first place.

Consider those numbers. One thousand and sixty executions, and one hundred and twenty-three exonerations in the modern death penalty era. Had those exonerations not taken place, had those 123 people been executed, those executions would have represented an error rate of greater than 10 percent. That is more than an embarrassing statistic; it is a horrifying one, one that should have us all questioning the use of capital punishment in this country. In fact, since 1999 when I first introduced this bill, 46 death row inmates have been exonerated throughout the country.

In the face of these numbers, the national debate on the death penalty has intensified. For the second year in a row, the number of executions, the number of death sentences imposed, and the size of the death row population have decreased as a growing number of voices have joined to express doubt about the use of capital punishment in America. The voices of those questioning the fairness of the death penalty have been heard from college campuses and courtrooms and podiums across the Nation, to the Senate Judiciary Committee hearing room, to the United States Supreme Court. The American public understands that the death penalty raises serious and complex issues. The death penalty can no longer be exploited for political purposes. In fact, for the first time, a May 2006 Gallup Poll reported that more Americans prefer a sentence of life without parole over the death penalty when given a choice. If anything, the political consensus is that it is time for a change. We must not ignore these voices.

In the wake of the Supreme Court's decision in 1976 to allow capital punishment, the Federal Government first resumed death penalty prosecutions after enactment of a 1988 Federal law that provided for the death penalty for murder in the course of a drug-kingpin conspiracy. The Federal death penalty was then expanded significantly in 1994, when the omnibus crime bill expanded its use to a total of some 60 Federal offenses. And despite my best efforts to halt the expansion of the Federal death penalty, more and more provisions seem to be added every year. While the use of and confidence in the death penalty is decreasing overall, the Federal Government has been going in the opposite direction, making more defendants eligible for capital punishment and increasing the size of its Federal death row. Moreover, there are now six individuals on Federal death row from States that do not have capital punishment. The Federal Government is pulling in the wrong direction as the rest of the Nation moves toward a more just system.

On this very day eight years ago, Governor George Ryan took the historic step of placing a moratorium on executions in Illinois and creating an independent, blue ribbon commission to review the State's death penalty system. The Commission conducted an extensive study of the death penalty in Illinois and released a report with 85 recommendations for reform of the death penalty system. The Commission concluded that the death penalty system is not fair, and that the risk of executing the innocent is alarmingly real. Governor Ryan later pardoned four death row inmates and commuted the sentences of all remaining Illinois death row inmates to life in prison before he left office in January 2003.

Illinois is not alone. Seven years ago, then Maryland Governor Parris Glendening learned of suspected racial disparities in the administration of the death penalty in Maryland. Governor Glendening did not look the other way. He commissioned the University of Maryland to conduct the most exhaustive study of Maryland's application of the death penalty in history. Then faced with the rapid approach of a scheduled execution, Governor Glendening acknowledged that it was unacceptable to allow executions to take place while the study he had ordered was not yet complete. So, in May 2002, he placed a moratorium on executions. Although Governor Bob Ehrlich lifted that moratorium and allowed executions to resume during his tenure, Governor Martin O'Malley has indicated that he would approve a legislative repeal of the death penalty and that he, like the majority in this country, favors life without parole.

Other States also have taken important steps. New York's death penalty was overturned by a court decision in 2004 and has not been reinstated by the legislature, and New Jersey enacted a moratorium in 2006. Along with New York and New Jersey, four other States that still have the death penalty technically on their books have not executed any individuals since 1976. In addition, there are 12 States, plus the District of Columbia, whose laws do not provide for capital punishment at all. And following in the footsteps of Illinois and Maryland, North Carolina and California both began legislative studies of their own capital punishment systems this past year.

The more we learn about the death penalty through studies like those, the more reasons we have to oppose it. For example, the Maryland study—released in January 2003—contained findings that should startle us all. The study found that blacks accused of killing whites are more likely to receive a death sentence than blacks who kill blacks, or than white killers. According to the report, black offenders who kill whites are four times as likely to be sentenced to death as blacks who kill blacks, and twice as likely to get a death sentence as whites who kill whites.

The Maryland and Illinois studies cannot be brushed aside as atypical or dismissed as revealing state-specific anomalies in an otherwise perfect system. Years of study have shown that the death penalty does little to deter crime, and that defendants' likelihood of being sentenced to death depends heavily on illegitimate factors such as whether they are rich or poor. Since reinstatement of the modern death penalty, 80 percent of murder victims in cases where death sentences were handed down were white, even though only 50 percent of murder victims are white. Nationwide, more than half of the death row inmates are African Americans or Hispanic Americans. There is evidence of racial disparities, inadequate counsel, prosecutorial misconduct, and false scientific evidence in death penalty systems across the country.

At least Maryland, Illinois, North Carolina, and California have begun the process of investigating the flaws in their own systems. But there are 36 other States that have death penalty provisions in their laws, 36 other States with systems that are most likely plagued with the same flaws. And these systems come at great additional cost to the taxpayers. For example, a 2005 report found that California's death penalty system costs taxpayers $114 million in additional costs each year. Similar reports detailing the extraordinary financial costs of the death penalty have been generated for States across the Nation.

Moreover, there are growing concerns about the most common method of execution, lethal injection. These concerns are so grave that eight States and the Federal system all halted individual executions in 2006 to work through these problems. And these numbers are growing. Just this last week, executions in North Carolina were halted because of challenges to lethal injection. More and more research is emerging that suggests that lethal injections are unnecessarily painful and cruel, and that this method of capital punishment—however sanitary or humane it may appear—is no less barbaric than the more antiquated methods lethal injection was designed to replace, such as the noose or the firing squad, no less horrific than the electric chair or the gas chamber.

Nothing is more barbaric, of course, than the execution of an innocent person, and it is clearer than ever that the

risk is very real. Already, information has surfaced that suggests that two men put to death in the 1990s may have been innocent. This is a chilling prospect, one that illustrates the very grave danger in imposing the death penalty. The loss of just one innocent life through capital punishment should be enough to force all of us to stop and reconsider this penalty.

And while we examine the flaws in our death penalty system, we cannot help but note that our use of the death penalty stands in stark contrast to the majority of nations, which have abolished the death penalty in law or practice. There are now 123 countries that have done so. In 2005, only China, Iran, and Saudi Arabia executed more people than we did. These countries, and others on the list of nations that actively use capital punishment, are countries that we often criticize for human rights abuses. The European Union denies membership in the alliance to those nations that use the death penalty. In fact, it passed a resolution calling for the immediate and unconditional global abolition of the death penalty, and it specifically called on all States within the United States to abolish the death penalty. This is significant because it reflects the unanimous view of a group of nations with which the United States enjoys close relationships and shares common values. We should join with them and with the over 100 other nations that have renounced this practice.

We are a Nation that prides itself on the fundamental principles of justice, liberty, equality and due process. We are a Nation that scrutinizes the human rights records of other nations. Historically, we are one of the first Nations to speak out against torture and killings by foreign governments. We should hold our own system of justice to the highest standard.

As a matter of justice, this is an issue that transcends political allegiances. A range of prominent voices in our country are raising serious questions about the death penalty, and they are not just voices of liberals, or of the faith community. They are the voices of former FBI Director William Sessions, former Justice Sandra Day O'Connor, Reverend Pat Robertson, George Will, former Mississippi warden Donald Cabana, the Republican former Governor of Illinois, George Ryan, and the Democratic former Governor of Maryland, Parris Glendening. The voices of those questioning our application of the death penalty are growing in number, they are growing louder, and they are reflected in some of the decisions of the highest court of the land. In recent years, the Supreme Court has held that the execution of juvenile offenders and the mentally retarded is unconstitutional.

As we begin a new year and a new Congress, I believe the continued use of the death penalty in the United States is beneath us. The death penalty is at odds with our best traditions. It is wrong and it is immoral. The adage ''two wrongs do not make a right,'' applies here in the most fundamental way. Our Nation has long ago done away with other barbaric punishments like whipping and cutting off the ears of criminals. Just we did away with these punishments as contrary to our humanity and ideals, it is time to abolish the death penalty as we seek to spread peace and justice both here and overseas. It is not just a matter of morality. The continued viability of our criminal justice system as a truly just system that deserves the respect of our own people and the world requires that we do so. Our Nation's goal to remain the world's leading defender of freedom, liberty and equality demands that we do so.

Abolishing the death penalty will not be an easy task. It will take patience, persistence, and courage. As we work to move forward in a rapidly changing world, let us leave this archaic practice behind.

I ask my colleagues to join me in taking the first step in abolishing the death penalty in our great Nation. I also call on each State that authorizes the use of the death penalty to cease this practice. Let us together reject violence and restore fairness and integrity to our criminal justice system.

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. 447

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 ''Federal Death Penalty Abolition Act of 2007''.

SEC. 2. REPEAL OF FEDERAL LAWS PROVIDING FOR THE DEATH PENALTY.

(a) HOMICIDE-RELATED OFFENSES.—

(1) MURDER RELATED TO THE SMUGGLING OF ALIENS.—Section 274(a)(1)(B)(iv) of the Immigration and Nationality Act (8 U.S.C. 1324(a)(1)(B)(iv)) is amended by striking ''punished by death or''.

(2) DESTRUCTION OF AIRCRAFT, MOTOR VEHICLES, OR RELATED FACILITIES RESULTING IN DEATH.—Section 34 of title 18, United States Code, is amended by striking ''to the death penalty or''.

(3) MURDER COMMITTED DURING A DRUG-RELATED DRIVE-BY SHOOTING.—Section 36(b)(2)(A) of title 18, United States Code, is amended by striking ''death or''.

(4) MURDER COMMITTED AT AN AIRPORT SERVING INTERNATIONAL CIVIL AVIATION.—Section 37(a) of title 18, United States Code, is amended, in the matter following paragraph (2), by striking ''punished by death or''.

(5) MURDER COMMITTED USING CHEMICAL WEAPONS.—Section 229A(a)(2) of title 18, United States Code, is amended—

(A) in the paragraph heading, by striking ''DEATH PENALTY'' and inserting ''CAUSING DEATH''; and

(B) by striking ''punished by death or''.

(6) CIVIL RIGHTS OFFENSES RESULTING IN DEATH.—Chapter 13 of title 18, United States Code, is amended—

(A) in section 241, by striking '', or may be sentenced to death'';

(B) in section 242, by striking '', or may be sentenced to death'';

(C) in section 245(b), by striking '', or may be sentenced to death''; and

(D) in section 247(d)(1), by striking '', or may be sentenced to death''.

(7) MURDER OF A MEMBER OF CONGRESS, AN IMPORTANT EXECUTIVE OFFICIAL, OR A SUPREME COURT JUSTICE.—Section 351 of title 18, United States Code, is amended—

(A) in subsection (b)—

(i) by striking ''(1)''; and

(ii) by striking '', or (2) by death'' and all that follows through the end of the subsection and inserting a period; and

(B) in subsection (d)—

(i) by striking ''(1)''; and

(ii) by striking '', or (2) by death'' and all that follows through the end of the subsection and inserting a period.

(8) DEATH RESULTING FROM OFFENSES INVOLVING TRANSPORTATION OF EXPLOSIVES, DESTRUCTION OF GOVERNMENT PROPERTY, OR DESTRUCTION OF PROPERTY RELATED TO FOREIGN OR INTERSTATE COMMERCE.—Section 844 of title 18, United States Code, is amended—

(A) in subsection (d), by striking ''or to the death penalty'';

(B) in subsection (f)(3), by striking ''subject to the death penalty, or'';

(C) in subsection (i), by striking ''or to the death penalty''; and

(D) in subsection (n), by striking ''(other than the penalty of death)''.

(9) MURDER COMMITTED BY USE OF A FIREARM OR ARMOR PIERCING AMMUNITION DURING COMMISSION OF A CRIME OF VIOLENCE OR A DRUG TRAFFICKING CRIME.—Section 924 of title 18, United States Code, is amended—

(A) in subsection (c)(5)(B)(i), by striking ''punished by death or''; and

(B) in subsection (j)(1), by striking ''by death or''.

(10) GENOCIDE.—Section 1091(b)(1) of title 18, United States Code, is amended by striking ''death or''.

(11) FIRST DEGREE MURDER.—Section 1111(b) of title 18, United States Code, is amended by striking ''by death or''.

(12) MURDER BY A FEDERAL PRISONER.—Section 1118 of title 18, United States Code, is amended—

(A) in subsection (a), by striking ''by death or''; and

(B) in subsection (b), in the third undesignated paragraph—

(i) by inserting ''or'' before ''an indeterminate''; and

(ii) by striking '', or an unexecuted sentence of death''.

(13) MURDER OF A STATE OR LOCAL LAW ENFORCEMENT OFFICIAL OR OTHER PERSON AIDING IN A FEDERAL INVESTIGATION; MURDER OF A STATE CORRECTIONAL OFFICER.—Section 1121 of title 18, United States Code, is amended—

(A) in subsection (a), by striking ''by sentence of death or''; and

(B) in subsection (b)(1), by striking ''or death''.

(14) MURDER DURING A KIDNAPING.—Section 1201(a) of title 18, United States Code, is amended by striking ''death or''.

(15) MURDER DURING A HOSTAGE-TAKING.—Section 1203(a) of title 18, United States Code, is amended by striking ''death or''.

(16) MURDER WITH THE INTENT OF PREVENTING TESTIMONY BY A WITNESS, VICTIM, OR INFORMANT.—Section 1512(a)(2)(A) of title 18, United States Code, is amended by striking ''the death penalty or''.

(17) MAILING OF INJURIOUS ARTICLES WITH INTENT TO KILL OR RESULTING IN DEATH.—Section 1716(j)(3) of title 18, United States Code, is amended by striking ''to the death penalty or''.

(18) ASSASSINATION OR KIDNAPING RESULTING IN THE DEATH OF THE PRESIDENT OR VICE PRESIDENT.—Section 1751 of title 18, United States Code, is amended—

(A) in subsection (b)—

(i) by striking ''(1)''; and

(ii) by striking '', or (2) by death'' and all that follows through the end of the subsection and inserting a period; and

(B) in subsection (d)—

(i) by striking ''(1)''; and

(ii) by striking '', or (2) by death'' and all that follows through the end of the subsection and inserting a period.

(19) MURDER FOR HIRE.—Section 1958(a) of title 18, United States Code, is amended by striking ''death or''.

(20) MURDER INVOLVED IN A RACKETEERING OFFENSE.—Section 1959(a)(1) of title 18, United States Code, is amended by striking ''death or''.

(21) WILLFUL WRECKING OF A TRAIN RESULTING IN DEATH.—Section 1992 of title 18, United States Code, is amended—

(A) in subsection (a), in the matter following paragraph (10), by striking ''or subject to death,''; and

(B) in subsection (b), in the matter following paragraph (3), by striking '', and if the offense resulted in the death of any person, the person may be sentenced to death''.

(22) BANK ROBBERY-RELATED MURDER OR KIDNAPING.—Section 2113(e) of title 18, United States Code, is amended by striking ''death or''.

(23) MURDER RELATED TO A CARJACKING.—Section 2119(3) of title 18, United States Code, is amended by striking '', or sentenced to death''.

(24) MURDER RELATED TO AGGRAVATED CHILD SEXUAL ABUSE.—Section 2241(c) of title 18, United States Code, is amended by striking ''unless the death penalty is imposed,''.

(25) MURDER RELATED TO SEXUAL ABUSE.—Section 2245 of title 18, United States Code, is amended by striking ''punished by death or''.

(26) MURDER RELATED TO SEXUAL EXPLOITATION OF CHILDREN.—Section 2251(e) of title 18, United States Code, is amended by striking ''punished by death or''.

(27) MURDER COMMITTED DURING AN OFFENSE AGAINST MARITIME NAVIGATION.—Section 2280(a)(1) of title 18, United States Code, is amended by striking ''punished by death or''.

(28) MURDER COMMITTED DURING AN OFFENSE AGAINST A MARITIME FIXED PLATFORM.—Section 2281(a)(1) of title 18, United States Code, is amended by striking ''punished by death or''.

(29) MURDER USING DEVICES OR DANGEROUS SUBSTANCES IN WATERS OF THE UNITED STATES.—Section 2282A of title 18, United States Code, is amended—

(A) by striking subsection (b); and

(B) by redesignating subsections (c) and (d) as subsections (b) and (c), respectively.

(30) MURDER INVOLVING THE TRANSPORTATION OF EXPLOSIVE, BIOLOGICAL, CHEMICAL, OR RADIOACTIVE OR NUCLEAR MATERIALS.—Section 2283 of title 18, United States Code, is amended—

(A) by striking subsection (b); and

(B) by redesignating subsection (c) as subsection (b).

(31) MURDER INVOLVING THE DESTRUCTION OF VESSEL OR MARITIME FACILITY.—Section 2291(d) of title 18, United States Code, is amended by striking ''to the death penalty or''.

(32) MURDER OF A UNITED STATES NATIONAL IN ANOTHER COUNTRY.—Section 2332(a)(1) of title 18, United States Code, is amended by striking ''death or''.

(33) MURDER BY THE USE OF A WEAPON OF MASS DESTRUCTION.—Section 2332a of title 18, United States Code, is amended—

(A) in subsection (a), in the matter following paragraph (4), by striking '', and if death results shall be punished by death'' and all that follows through the end of the subsection and inserting a period; and

(B) in subsection (b), by striking '', and if death results shall be punished by death'' and all that follows through the end of the subsection and inserting a period.

(34) MURDER BY ACT OF TERRORISM TRANSCENDING NATIONAL BOUNDARIES.—Section 2332b(c)(1)(A) of title 18, United States Code, is amended by striking ''by death, or''.

(35) MURDER INVOLVING TORTURE.—Section 2340A(a) of title 18, United States Code, is amended by striking ''punished by death or''.

(36) MURDER INVOLVING A WAR CRIME.—Section 2441(a) of title 18, United States Code, is amended by striking '', and if death results to the victim, shall also be subject to the penalty of death''.

(37) MURDER RELATED TO A CONTINUING CRIMINAL ENTERPRISE OR RELATED MURDER OF A FEDERAL, STATE, OR LOCAL LAW ENFORCEMENT OFFICER.—Section 408(e) of the Controlled Substances Act (21 U.S.C. 848(e)) is amended—

(A) in the subsection heading, by striking ''DEATH PENALTY'' and inserting ''INTENTIONAL KILLING''; and

(B) in paragraph (1)—

(i) subparagraph (A), by striking '', or may be sentenced to death''; and

(ii) in subparagraph (B), by striking '', or may be sentenced to death''.

(38) DEATH RESULTING FROM AIRCRAFT HIJACKING.—Section 46502 of title 49, United States Code, is amended—

(A) in subsection (a)(2)(B), by striking ''put to death or''; and

(B) in subsection (b)(1)(B), by striking ''put to death or''.

(b) NON-HOMICIDE RELATED OFFENSES.—

(1) ESPIONAGE.—Section 794(a) of title 18, United States Code, is amended by striking ''punished by death or'' and all that follows before the period and inserting ''imprisoned for any term of years or for life''.

(2) TREASON.—Section 2381 of title 18, United States Code, is amended by striking ''shall suffer death, or''.

(c) TITLE 10.—

(1) OFFENSES.—

(A) CONSPIRACY.—Section 881(b) of title 10, United States Code (article 81(b) of the Uniform Code of Military Justice), is amended by striking '', if death results'' and all that follows through the end and inserting ''as a court-martial or military commission may direct.''.

(B) DESERTION.—Section 885(c) of title 10, United States Code (article 85(c)), is amended by striking '', if the offense is committed in time of war'' and all that follows through the end and inserting ''as a court-martial may direct.''.

(C) ASSAULTING OR WILLFULLY DISOBEYING SUPERIOR COMMISSIONED OFFICER.—Section 890 of title 10, United States Code (article 90), is amended by striking '', if the offense is committed in time of war'' and all that follows and inserting ''as a court-martial may direct.''.

(D) MUTINY OR SEDITION.—Section 894(b) of title 10, United States Code (article 94(b)), is amended by striking ''by death or such other punishment''.

(E) MISBEHAVIOR BEFORE THE ENEMY.—Section 899 of title 10, United States Code (article 99), is amended by striking ''by death or such other punishment''.

(F) SUBORDINATE COMPELLING SURRENDER.—Section 900 of title 10, United States Code (article 100), is amended by striking ''by death or such other punishment''.

(G) IMPROPER USE OF COUNTERSIGN.—Section 901 of title 10, United States Code (article 101), is amended by striking ''by death or such other punishment''.

(H) FORCING A SAFEGUARD.—Section 902 of title 10, United States Code (article 102), is amended by striking ''suffer death'' and all that follows and inserting ''be punished as a court-martial may direct.''.

(I) AIDING THE ENEMY.—Section 904 of title 10, United States Code (article 104), is amended by striking ''suffer death or such other punishment as a court-martial or military commission may direct'' and inserting ''be punished as a court-martial or military commission may direct''.

(J) SPIES.—Section 906 of title 10, United States Code (article 106), is amended by striking ''by death'' and inserting ''by imprisonment for life''.

(K) ESPIONAGE.—Section 906a of title 10, United States Code (article 106a), is amended—

(i) by striking subsections (b) and (c);

(ii) by redesignating paragraphs (2) and (3) of subsection (a) as subsections (b) and (c), respectively;

(iii) in subsection (a)—

(I) by striking ''(1)'';

(II) by striking ''paragraph (2)'' and inserting ''subsection (b)'';

(III) by striking ''paragraph (3)'' and inserting ''subsection (c)''; and

(IV) by striking ''as a court-martial may direct,'' and all that follows and inserting ''as a court-martial may direct.'';

(iv) in subsection (b), as so redesignated—

(I) by striking ''paragraph (1)'' and inserting ''subsection (a)''; and

(II) by redesignating subparagraphs (A), (B), and (C) as paragraphs (1), (2), and (3), respectively; and

(v) in subsection (c), as so redesignated, by striking ''paragraph (1)'' and inserting ''subsection (a)''.

(L) IMPROPER HAZARDING OF VESSEL.—The text of section 910 of title 10, United States Code (article 110), is amended to read as follows:

''Any person subject to this chapter who willfully and wrongfully, or negligently, hazards or suffers to be hazarded any vessel of the Armed Forces shall be punished as a court-martial may direct.''.

(M) MISBEHAVIOR OF SENTINEL.—Section 913 of title 10, United States Code (article 113), is amended by striking '', if the offense is committed in time of war'' and all that follows and inserting ''as a court-martial may direct.''.

(N) MURDER.—Section 918 of title 10, United States Code (article 118), is amended by striking ''death or imprisonment for life as a court-martial may direct'' and inserting ''imprisonment for life''.

(O) DEATH OR INJURY OF AN UNBORN CHILD.—Section 919a(a) of title 10, United States Code, is amended—

(i) in paragraph (1), by striking '', other than death,''; and

(ii) by striking paragraph (4).

(P) RAPE.—Section 920(a) of title 10, United States Code (article 120(a)), is amended by striking ''by death or such other punishment''.

(Q) CRIMES TRIABLE BY MILITARY COMMISSION.—Section 950v(b) of title 10, United States Code, is amended—

(i) in paragraph (1), by striking ''by death or such other punishment'';

(ii) in paragraph (2), by striking '', if death results'' and all that follows and inserting ''as a military commission under this chapter may direct.'';

(iii) in paragraph (7), by striking '', if death results'' and all that follows and inserting ''as a military commission under this chapter may direct.'';

(iv) in paragraph (8), by striking '', if death results'' and all that follows and inserting ''as a military commission under this chapter may direct.'';

(v) in paragraph (9), by striking '', if death results'' and all that follows and inserting

''as a military commission under this chapter may direct.'';

(vi) in paragraph (11)(A), by striking '', if death results'' and all that follows and inserting ''as a military commission under this chapter may direct.'';

(vii) in paragraph (12)(A), by striking '', if death results'' and all that follows and inserting ''as a military commission under this chapter may direct.'';

(viii) in paragraph (13)(A), by striking '', if death results'' and all that follows and inserting ''as a military commission under this chapter may direct.'';

(ix) in paragraph (14), by striking '', if death results'' and all that follows and inserting ''as a military commission under this chapter may direct.'';

(x) in paragraph (15), by striking ''by death or such other punishment'';

(xi) in paragraph (17), by striking '', if death results'' and all that follows and inserting ''as a military commission under this chapter may direct.'';

(xii) in paragraph (23), by striking '', if death results'' and all that follows and inserting ''as a military commission under this chapter may direct.'';

(xiii) in paragraph (24), by striking '', if death results'' and all that follows and inserting ''as a military commission under this chapter may direct.'';

(xiv) in paragraph (27), by striking ''by death or such other punishment''; and

(xv) in paragraph (28), by striking '', if death results'' and all that follows and inserting ''as a military commission under this chapter may direct.''.

(2) JURISDICTIONAL AND PROCEDURAL MATTERS.—

(A) DISMISSED OFFICER'S RIGHT TO TRIAL BY COURT-MARTIAL.—Section 804(a) of title 10, United States Code (article 4(a) of the Uniform Code of Military Justice), is amended by striking ''or death''.

(B) COURTS-MARTIAL CLASSIFIED.—Section 816(1)(A) of title 10, United States Code (article 10(1)(A)), is amended by striking ''or, in a case in which the accused may be sentenced to a penalty of death'' and all that follows through ''(article 25a)''.

(C) JURISDICTION OF GENERAL COURTS-MARTIAL.—Section 818 of title 10, United States Code (article 18), is amended—

(i) in the first sentence by striking ''including the penalty of death when specifically authorized by this chapter'' and inserting ''except death''; and

(ii) by striking the third sentence.

(D) JURISDICTION OF SPECIAL COURTS-MARTIAL.—Section 819 of title 10, United States Code (article 19), is amended in the first sentence by striking ''for any noncapital offense'' and all that follows and inserting ''for any offense made punishable by this chapter.''.

(E) JURISDICTION OF SUMMARY COURTS-MARTIAL.—Section 820 of title 10, United States Code (article 20), is amended in the first sentence by striking ''noncapital''.

(F) NUMBER OF MEMBERS IN CAPITAL CASES.—

(i) IN GENERAL.—Section 825a of title 10, United States Code (article 25a), is repealed.

(ii) CLERICAL AMENDMENT.—The table of sections at the beginning of subchapter V of chapter 47 of title 10, United States Code, is amended by striking the item relating to section 825a (article 25a).

(G) ABSENT AND ADDITIONAL MEMBERS.—Section 829(b)(2) of title 10, United States Code (article 29(b)(2)), is amended by striking ''or, in a case in which the death penalty may be adjudged'' and all that follows and inserting a period.

(H) STATUTE OF LIMITATIONS.—Subsection (a) of section 843 of title 10, United States Code (article 43), is amended to read as follows:

''(a)(1) A person charged with an offense described in paragraph (2) may be tried and punished at any time without limitation.

''(2) An offense described in this paragraph is any offense as follows:

''(A) Absence without leave or missing movement in time of war.

''(B) Murder.

''(C) Rape.

''(D) A violation of section 881 of this title (article 81) that results in death to one or more of the victims.

''(E) Desertion or attempt to desert in time of war.

''(F) A violation of section 890 of this title (article 90) committed in time of war.

''(G) Attempted mutiny, mutiny, sedition, or failure to suppress or report a mutiny or sedition.

''(H) A violation of section 899 of this title (article 99).

''(I) A violation of section 900 of this title (article 100).

''(J) A violation of section 901 of this title (article 101).

''(K) A violation of section 902 of this title (article 102).

''(L) A violation of section 904 of this title (article 104).

''(M) A violation of section 906 of this title (article 106).

''(N) A violation of section 906a of this title (article 106a).

''(O) A violation of section 910 of this title (article 110) in which the person subject to this chapter willfully and wrongfully hazarded or suffered to be hazarded any vessel of the Armed Forces.

''(P) A violation of section 913 of this title (article 113) committed in time of war.''.

(I) PLEAS OF ACCUSED.—Section 845(b) of title 10, United States Code (article 45(b)), is amended—

(i) by striking the first sentence; and

(ii) by striking ''With respect to any other charge'' and inserting ''With respect to any charge''.

(J) DEPOSITIONS.—Section 849 of title 10, United States Code (article 49), is amended—

(i) in subsection (d), by striking ''in any case not capital''; and

(ii) by striking subsections (e) and (f).

(K) ADMISSIBILITY OF RECORDS OF COURTS OF INQUIRY.—Section 850 of title 10, United States Code (article 50), is amended—

(i) in subsection (a), by striking ''not capital and''; and

(ii) in subsection (b), by striking ''capital cases or''.

(L) NUMBER OF VOTES REQUIRED FOR CONVICTION AND SENTENCING BY COURT-MARTIAL.—Section 852 of title 10, United States Code (article 52), is amended—

(i) in subsection (a)—

(I) by striking paragraph (1);

(II) by redesignating paragraph (2) as subsection (a); and

(III) by striking ''any other offense'' and inserting ''any offense''; and

(ii) in subsection (b)—

(I) by striking paragraph (1); and

(II) by redesignating paragraphs (2) and (3) as paragraphs (1) and (2), respectively.

(M) RECORD OF TRIAL.—Section 854(c)(1)(A) of title 10, United States Code (article 54(c)(1)(A)), is amended by striking ''death,''.

(N) FORFEITURE OF PAY AND ALLOWANCES DURING CONFINEMENT.—Section 858b(a)(2)(A) of title 10, United States Code (article 58b(a)(2)(A)), is amended by striking ''or death''.

(O) WAIVER OR WITHDRAWAL OF APPEAL.—Section 861 of title 10, United States Code (article 61), is amended—

(i) in subsection (a), by striking ''except a case in which the sentence as approved under section 860(c) of this title (article 60(c)) includes death,''; and

(ii) in subsection (b), by striking ''Except in a case in which the sentence as approved under section 860(c) of this title (article 60(c)) includes death, the accused'' and inserting ''The accused''.

(P) REVIEW BY COURT OF CRIMINAL APPEALS.—Section 866(b) of title 10, United States Code (article 66(b)), is amended—

(i) in the matter preceding paragraph (1), by inserting ''in which'' after ''court-martial'';

(ii) in paragraph (1), by striking ''in which the sentence, as approved, extends to death,'' and inserting ''the sentence, as approved, extends to''; and

(iii) in paragraph (2), by striking ''except in the case of a sentence extending to death,''.

(Q) REVIEW BY COURT OF APPEALS FOR THE ARMED FORCES.—Section 867(a) of title 10, United States Code (article 67(a)), is amended—

(i) by striking paragraph (1); and

(ii) by redesignating paragraphs (2) and (3) as paragraphs (1) and (2), respectively.

(R) EXECUTION OF SENTENCE.—Section 871 of title 10, United States Code (article 71), is amended—

(i) by striking subsection (a);

(ii) by redesignating subsection (b) as subsection (a);

(iii) by striking subsection (c) and inserting the following:

''(b)(1) If a sentence extends to dismissal or a dishonorable or bad conduct discharge and if the right of the accused to appellate review is not waived, and an appeal is not withdrawn, under section 861 of this title (article 61), that part of the sentence extending to dismissal or a dishonorable or bad conduct discharge may not be executed until there is a final judgment as to the legality of the proceedings (and with respect to dismissal, approval under subsection (a)). A judgment as to legality of the proceedings is final in such cases when review is completed by a Court of Criminal Appeals and—

''(A) the time for the accused to file a petition for review by the Court of Appeals for the Armed Forces has expired and the accused has not filed a timely petition for such review and the case is not otherwise under review by that Court;

''(B) such a petition is rejected by the Court of Appeals for the Armed Forces; or

''(C) review is completed in accordance with the judgment of the Court of Appeals for the Armed Forces and—

''(i) a petition for a writ of certiorari is not filed within the time limits prescribed by the Supreme Court;

''(ii) such a petition is rejected by the Supreme Court; or

''(iii) review is otherwise completed in accordance with the judgment of the Supreme Court.

''(2) If a sentence extends to dismissal or a dishonorable or bad conduct discharge and if the right of the accused to appellate review is waived, or an appeal is withdrawn, under section 861 of this title (article 61), that part of the sentence extending to dismissal or a bad conduct or dishonorable discharge may not be executed until review of the case by a judge advocate (and any action on that review) under section 864 of this title (article 64) is completed. Any other part of a court-martial sentence may be ordered executed by the convening authority or other person acting on the case under section 860 of this title (article 60) when approved by him under that section.'';

(iv) by redesignating subsection (d) as subsection (c); and

(v) in subsection (c), as so redesignated, by striking '', except a sentence of death''.

(S) GENERAL ARTICLE.—Section 934 of title 10, United States Code (article 134), is amended by striking ''crimes and offenses not capital'' and inserting ''crimes and offenses''

(T) JURISDICTION OF MILITARY COMMISSIONS.—Section 948d(d) of title 10, United States Code, is amended by striking ''including the penalty of death'' and all that follows and inserting ''except death.''.

(U) NUMBER OF MEMBERS OF MILITARY COMMISSIONS.—Subsection (a) of section 948m of title 10, United States Code, is amended to read as follows:

''(a) NUMBER OF MEMBERS.—A military commission under this chapter shall have at least 5 members.''.

(V) NUMBER OF VOTES REQUIRED FOR SENTENCING BY MILITARY COMMISSION.—Section 949m of title 10, United States Code, is amended—

(i) in subsection (b)—

(I) by striking paragraph (1); and

(II) by redesignating paragraphs (2) and (3) as paragraphs (1) and (2), respectively; and

(ii) by striking subsection (c).

(W) APPELLATE REFERRAL FOR MILITARY COMMISSIONS.—Section 950c of title 10, United States Code, is amended—

(i) in subsection (b)(1), by striking ''except a case in which the sentence as approved under section 950b of this title extends to death,''; and

(ii) in subsection (c), by striking ''Except in a case in which the sentence as approved under section 950b of this title extends to death, the accused'' and inserting ''The accused''.

(X) EXECUTION OF SENTENCE BY MILITARY COMMISSIONS.—

(i) IN GENERAL.—Section 950i of title 10, United States Code, is amended—

(I) in the section heading, by striking ''**; PROCEDURES FOR EXECUTION OF SENTENCE OF DEATH**'';

(II) by striking subsections (b) and (c);

(III) by redesignating subsection (d) as subsection (b); and

(IV) in subsection (b), as so redesignated, by striking '', except a sentence of death''.

(ii) CLERICAL AMENDMENT.—The table of sections at the beginning of subchapter VI of chapter 47A of title 10, United States Code, is amended by striking the item relating to section 950i and inserting the following new item:

''950i. Execution of sentence.''.

(d) CONFORMING AMENDMENTS.—

(1) REPEAL OF CRIMINAL PROCEDURES RELATING TO IMPOSITION OF DEATH SENTENCE.—

(A) IN GENERAL.—Chapter 228 of title 18, United States Code, is repealed.

(B) CLERICAL AMENDMENT.—The table of chapters for part II of title 18, United States Code, is amended by striking the item relating to chapter 228.

(2) OTHER PROVISIONS.—

(A) INTERCEPTION OF WIRE, ORAL, OR ELECTRONIC COMMUNICATIONS.—Section 2516(1)(a) of title 18, United States Code, is amended by striking ''by death or''.

(B) RELEASE AND DETENTION PENDING JUDICIAL PROCEEDINGS.—Chapter 207 of title 18, United States Code, is amended—

(i) in section 3142(f)(1)(B), by striking ''or death''; and

(ii) in section 3146(b)(1)(A)(i), by striking ''death, life imprisonment,'' and inserting ''life imprisonment''.

(C) VENUE IN CAPITAL CASES.—Chapter 221 of title 18, United States Code, is amended—

(i) by striking section 3235; and

(ii) in the table of sections, by striking the item relating to section 3235.

(D) PERIOD OF LIMITATIONS.—

(i) IN GENERAL.—Chapter 213 of title 18, United States Code, is amended by striking section 3281 and inserting the following:

''§ 3281. Offenses with no period of limitations

''An indictment may be found at any time without limitation for the following offenses:

''(1) A violation of section 274(a)(1)(A) of the Immigration and Nationality Act (8 U.S.C. 1324(a)(1)(A)) resulting in the death of any person.

''(2) A violation of section 34 of this title.

''(3) A violation of section 36(b)(2)(A) of this title.

''(4) A violation of section 37(a) of this title that results in the death of any person.

''(5) A violation of section 229A(a)(2) of this title.

''(6) A violation of section 241, 242, 245(b), or 247(a) of this title that—

''(A) results in death; or

''(B) involved kidnapping or an attempt to kidnap, aggravated sexual abuse or an attempt to commit aggravated sexual abuse, or an attempt to kill.

''(7) A violation of subsection (b) or (d) of section 351 of this title.

''(8) A violation of section 794(a) of this title.

''(9) A violation of subsection (d), (f), or (i) of section 844 of this title that results in the death of any person (including any public safety officer performing duties as a direct or proximate result of conduct prohibited by such subsection).

''(10) An offense punishable under subsection (c)(5)(B)(i) or (j)(1) of section 924 of this title.

''(11) An offense punishable under section 1091(b)(1) of this title.

''(12) A violation of section 1111 of this title that is murder in the first degree.

''(13) A violation of section 1118 of this title.

''(14) A violation of subsection (a) or (b) of section 1121 of this title.

''(15) A violation of section 1201(a) of this title that results in the death of any person.

''(16) A violation of section 1203(a) of this title that results in the death of any person.

''(17) An offense punishable under section 1512(a)(3) of this title that is murder (as that term is defined in section 1111 of this title).

''(18) An offense punishable under section 1716(j)(3) of this title.

''(19) A violation of subsection (b) or (d) of section 1751 of this title.

''(20) A violation of section 1958(a) of this title that results in death.

''(21) A violation of section 1959(a) of this title that is murder.

''(22) A violation of subsection (a) (except for a violation of paragraph (8), (9) or (10) of such subsection) or (b) of section 1992 of this title that results in the death of any person.

''(23) A violation of section 2113(e) of this title that results in death.

''(24) An offense punishable under section 2119(3) of this title.

''(25) An offense punishable under section 2245(a) of this title.

''(26) A violation of section 2251 of this title that results in the death of a person.

''(27) A violation of section 2280(a)(1) of this title that results in the death of any person.

''(28) A violation of section 2281(a)(1) of this title that results in the death of any person.

''(29) A violation of section 2282A(a) of this title that causes the death of any person.

''(30) A violation of section 2283(a) of this title that causes the death of any person.

''(31) An offense punishable under section 2291(d) of this title.

''(32) An offense punishable under section 2332(a)(1) of this title.

''(33) A violation of subsection (a) or (b) of section 2332a of this title that results in death.

''(34) An offense punishable under section 2332b(c)(1)(A) of this title.

''(35) A violation of section 2340A(a) of this title that results in the death of any person.

''(36) A violation of section 2381 of this title.

''(37) A violation of section 2441(a) of this title that results in the death of the victim.

''(38) A violation of section 408(e) of the Controlled Substances Act (21 U.S.C. 848(e)).

''(39) An offense punishable under subsection (a)(2)(B) or (b)(1)(B) of section 46502 of title 49.''

(ii) CLERICAL AMENDMENT.—The table of sections for chapter 213 of title 18, United States Code, is amended by striking the item relating to section 3281 and inserting the following:

''3281. Offenses with no period of limitations.''.

SEC. 3. PROHIBITION ON IMPOSITION OF DEATH SENTENCE.

(a) IN GENERAL.—Notwithstanding any other provision of law, no person may be sentenced to death or put to death on or after the date of enactment of this Act for any violation of Federal law.

(b) PERSONS SENTENCED BEFORE DATE OF ENACTMENT.—Notwithstanding any other provision of law, any person sentenced to death before the date of enactment of this Act for any violation of Federal law shall serve a sentence of life imprisonment without the possibility of parole.

By Mr. BIDEN (for himself, Mr. MCCONNELL, Mr. MENENDEZ, Mrs. MURRAY, and Mr. SPECTER):

S. 449. A bill to amend title I of the Omnibus Crime Control and Safe Streets Act of 1968 to provide standards and procedures to guide both State and local law enforcement agencies and law enforcement officers during internal investigations, interrogation of law enforcement officers, and administrative disciplinary hearings, to ensure accountability of law enforcement officers, to guarantee the due process rights of law enforcement officers, and to require States to enact law enforcement discipline, accountability, and due process laws; to the Committee on the Judiciary.

Mr. BIDEN. Mr. President, I rise to introduce the State and Local Law Enforcement Discipline Accountability, and Due Process Act of 2007.

These are trying times for the men and women on our front lines who provide our domestic security and public safety—our Nation's law enforcement personnel. Indeed, they face one of the most difficult work environments imaginable—an average of 165 police officers are killed in the line of duty every year. Our Nation's law enforcement officers put themselves in harms way on a daily basis to ensure the safety of their fellow citizens and the domestic security of our Nation. Nevertheless, many times these brave officers do not receive basic rights if they become involved in internal police investigations or administrative hearings. According to the National Association of Police Organizations, ''[i]n roughly half of the states in this country, officers enjoy some legal protections against false accusations and abusive conduct, but hundreds of thousands of officers have very limited due

process rights and confront limitations on their exercise of other rights, such as the right to engage in political activities.'' Similarly, the Fraternal Order of Police notes that, ''[i]n a startling number of jurisdictions throughout this country, law enforcement officers have no procedural or administrative protections whatsoever; in fact, they can be, and frequently are, summarily dismissed from their jobs without explanation. Officers who lose their careers due to administrative or political expediency almost always find it impossible to find new employment in public safety. An officer's reputation, once tarnished by accusation, is almost impossible to restore.''

The legislation being introduced today, which is endorsed by the Fraternal Order of Police and of the National Association of Police Organizations, seeks to provide officers with certain basic protections in those jurisdictions where such workplace protections are not currently provided. First, this bill allows law enforcement officials to engage in political activities when they are off-duty. Second, it provides standards and procedures to guide State and local law enforcement agencies during internal investigations, interrogations, and administrative disciplinary hearings. Additionally, it calls upon States to develop and enforce these disciplinary procedures. The bill would preempt State laws which confer fewer rights than those provided for in the legislation, but it would not preempt any State or local laws that confer rights or protections that are equal to or exceed the rights and protections afforded in the bill. For example, my own State of Delaware has a law enforcement officers' bill of rights, and those procedures would not be impacted by the provisions of this bill.

This bill will also include important provisions that will enhance the ability of citizens to hold their local police departments accountable. The legislation includes provisions that will ensure citizen complaints against police officers are investigated and that citizens are informed of the outcome of these investigations. The bill balances the rights of police officers with the rights of citizens to raise valid concerns about the conduct of some of these officers. In addition, I have consulted with constitutional experts who have opined that the bill is consistent with Congress' powers under the Commerce Clause and that it does not run afoul of the Supreme Court's Tenth Amendment jurisprudence.

I would also like to note that I understand the objections that many management groups, including the International Association of Chiefs of Police's, have to this measure. I have discussed this with them, and I've pledged that their views will be heard and considered as this bill is debated in Congress. It is my view that we must bridge this gap. Without a meeting of the minds between police management and union officials, the enactment of a meaningful law enforcement officers' bill of rights will be difficult. Law enforcement officials are facing unprecedented challenges, and management and labor simply must work together on this issue and the numerous other issues facing the law enforcement community.

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. 449

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 ''State and Local Law Enforcement Discipline, Accountability, and Due Process Act of 2007''.

SEC. 2. FINDINGS AND DECLARATION OF PURPOSE AND POLICY.

(a) FINDINGS.—Congress finds that—

(1) the rights of law enforcement officers to engage in political activity or to refrain from engaging in political activity, except when on duty, or to run as candidates for public office, unless such service is found to be in conflict with their service as officers, are activities protected by the first amendment of the United States Constitution, as applied to the States through the 14th amendment of the United States Constitution, but these rights are often violated by the management of State and local law enforcement agencies;

(2) a significant lack of due process rights of law enforcement officers during internal investigations and disciplinary proceedings has resulted in a loss of confidence in these processes by many law enforcement officers, including those unfairly targeted for their labor organization activities or for their aggressive enforcement of the laws, demoralizing many rank and file officers in communities and States;

(3) unfair treatment of officers has potentially serious long-term consequences for law enforcement by potentially deterring or otherwise preventing officers from carrying out their duties and responsibilities effectively and fairly;

(4) the lack of labor-management cooperation in disciplinary matters and either the perception or the actuality that officers are not treated fairly detrimentally impacts the recruitment of and retention of effective officers, as potential officers and experienced officers seek other careers, which has serious implications and repercussions for officer morale, public safety, and labor-management relations and strife and can affect interstate and intrastate commerce, interfering with the normal flow of commerce;

(5) there are serious implications for the public safety of the citizens and residents of the United States which threatens the domestic tranquility of the United States because of a lack of statutory protections to ensure—

(A) the due process and political rights of law enforcement officers;

(B) fair and thorough internal investigations and interrogations of and disciplinary proceedings against law enforcement officers; and

(C) effective procedures for receipt, review, and investigation of complaints against officers, fair to both officers and complainants; and

(6) resolving these disputes and problems and preventing the disruption of vital police services is essential to the well-being of the United States and the domestic tranquility of the Nation.

(b) DECLARATION OF POLICY.—Congress declares that it is the purpose of this Act and the policy of the United States to—

(1) protect the due process and political rights of State and local law enforcement officers and ensure equality and fairness of treatment among such officers;

(2) provide continued police protection to the general public;

(3) provide for the general welfare and ensure domestic tranquility; and

(4) prevent any impediments to the free flow of commerce, under the rights guaranteed under the United States Constitution and Congress' authority thereunder.

SEC. 3. DISCIPLINE, ACCOUNTABILITY, AND DUE PROCESS OF OFFICERS.

(a) IN GENERAL.—Part H of title I of the Omnibus Crime Control and Safe Streets Act of 1968 (42 U.S.C. 3781 et seq.) is amended by adding at the end the following:

''SEC. 820. DISCIPLINE, ACCOUNTABILITY, AND DUE PROCESS OF STATE AND LOCAL LAW ENFORCEMENT OFFICERS.

''(a) DEFINITIONS.—In this section:

''(1) DISCIPLINARY ACTION.—The term 'disciplinary action' means any adverse personnel action, including suspension, reduction in pay, rank, or other employment benefit, dismissal, transfer, reassignment, unreasonable denial of secondary employment, or similar punitive action taken against a law enforcement officer.

''(2) DISCIPLINARY HEARING.—The term 'disciplinary hearing' means an administrative hearing initiated by a law enforcement agency against a law enforcement officer, based on an alleged violation of law, that, if proven, would subject the law enforcement officer to disciplinary action.

''(3) EMERGENCY SUSPENSION.—The term 'emergency suspension' means the temporary action by a law enforcement agency of relieving a law enforcement officer from the active performance of law enforcement duties without a reduction in pay or benefits when the law enforcement agency, or an official within that agency, determines that there is probable cause, based upon the conduct of the law enforcement officer, to believe that the law enforcement officer poses an immediate threat to the safety of that officer or others or the property of others.

''(4) INVESTIGATION.—The term 'investigation'—

''(A) means an action taken to determine whether a law enforcement officer violated a law by a public agency or a person employed by a public agency, acting alone or in cooperation with or at the direction of another agency, or a division or unit within another agency, regardless of a denial by such an agency that any such action is not an investigation; and

''(B) includes—

''(i) asking questions of any other law enforcement officer or non-law enforcement officer;

''(ii) conducting observations;

''(iii) reviewing and evaluating reports, records, or other documents; and

''(iv) examining physical evidence.

''(5) LAW ENFORCEMENT OFFICER.—The terms 'law enforcement officer' and 'officer' have the meaning given the term 'law enforcement officer' in section 1204, except the term does not include a law enforcement officer employed by the United States, or any department, agency, or instrumentality thereof.

''(6) PERSONNEL RECORD.—The term 'personnel record' means any document, whether in written or electronic form and irrespective of location, that has been or may be used in determining the qualifications of a

law enforcement officer for employment, promotion, transfer, additional compensation, termination or any other disciplinary action.

''(7) PUBLIC AGENCY AND LAW ENFORCEMENT AGENCY.—The terms 'public agency' and 'law enforcement agency' each have the meaning given the term 'public agency' in section 1204, except the terms do not include the United States, or any department, agency, or instrumentality thereof.

''(8) SUMMARY PUNISHMENT.—The term 'summary punishment' means punishment imposed—

''(A) for a violation of law that does not result in any disciplinary action; or

''(B) for a violation of law that has been negotiated and agreed upon by the law enforcement agency and the law enforcement officer, based upon a written waiver by the officer of the rights of that officer under subsection (i) and any other applicable law or constitutional provision, after consultation with the counsel or representative of that officer.

''(b) APPLICABILITY.—

''(1) IN GENERAL.—This section sets forth the due process rights, including procedures, that shall be afforded a law enforcement officer who is the subject of an investigation or disciplinary hearing.

''(2) NONAPPLICABILITY.—This section does not apply in the case of—

''(A) an investigation of specifically alleged conduct by a law enforcement officer that, if proven, would constitute a violation of a statute providing for criminal penalties; or

''(B) a nondisciplinary action taken in good faith on the basis of the employment related performance of a law enforcement officer.

''(c) POLITICAL ACTIVITY.—

''(1) RIGHT TO ENGAGE OR NOT TO ENGAGE IN POLITICAL ACTIVITY.—Except when on duty or acting in an official capacity, a law enforcement officer shall not be prohibited from engaging in political activity or be denied the right to refrain from engaging in political activity.

''(2) RIGHT TO RUN FOR ELECTIVE OFFICE.—A law enforcement officer shall not be—

''(A) prohibited from being a candidate for an elective office or from serving in such an elective office, solely because of the status of the officer as a law enforcement officer; or

''(B) required to resign or take an unpaid leave from employment with a law enforcement agency to be a candidate for an elective office or to serve in an elective office, unless such service is determined to be in conflict with or incompatible with service as a law enforcement officer.

''(3) ADVERSE PERSONNEL ACTION.—An action by a public agency against a law enforcement officer, including requiring the officer to take unpaid leave from employment, in violation of this subsection shall be considered an adverse personnel action within the meaning of subsection (a)(1).

''(d) EFFECTIVE PROCEDURES FOR RECEIPT, REVIEW, AND INVESTIGATION OF COMPLAINTS AGAINST LAW ENFORCEMENT OFFICERS.—

''(1) COMPLAINT PROCESS.—Not later than 1 year after the effective date of this section, each law enforcement agency shall adopt and comply with a written complaint procedure that—

''(A) authorizes persons from outside the law enforcement agency to submit written complaints about a law enforcement officer to—

''(i) the law enforcement agency employing the law enforcement officer; or

''(ii) any other law enforcement agency charged with investigating such complaints;

''(B) sets forth the procedures for the investigation and disposition of such complaints;

''(C) provides for public access to required forms and other information concerning the submission and disposition of written complaints; and

''(D) requires notification to the complainant in writing of the final disposition of the complaint and the reasons for such disposition.

''(2) INITIATION OF AN INVESTIGATION.—

''(A) IN GENERAL.—Except as provided in subparagraph (B), an investigation based on a complaint from outside the law enforcement agency shall commence not later than 15 days after the receipt of the complaint by—

''(i) the law enforcement agency employing the law enforcement officer against whom the complaint has been made; or

''(ii) any other law enforcement agency charged with investigating such a complaint.

''(B) EXCEPTION.—Subparagraph (A) does not apply if—

''(i) the law enforcement agency determines from the face of the complaint that each allegation does not constitute a violation of law; or

''(ii) the complainant fails to comply substantially with the complaint procedure of the law enforcement agency established under this section.

''(3) COMPLAINANT OR VICTIM CONFLICT OF INTEREST.—The complainant or victim of the alleged violation of law giving rise to an investigation under this subsection may not conduct or supervise the investigation or serve as an investigator.

''(e) NOTICE OF INVESTIGATION.—

''(1) IN GENERAL.—Any law enforcement officer who is the subject of an investigation shall be notified of the investigation 24 hours before the commencement of questioning of such officer or to otherwise being required to provide information to an investigating agency.

''(2) CONTENTS OF NOTICE.—Notice given under paragraph (1) shall include—

''(A) the nature and scope of the investigation;

''(B) a description of any allegation contained in a written complaint;

''(C) a description of each violation of law alleged in the complaint for which suspicion exists that the officer may have engaged in conduct that may subject the officer to disciplinary action; and

''(D) the name, rank, and command of the officer or any other individual who will be conducting the investigation.

''(f) RIGHTS OF LAW ENFORCEMENT OFFICERS PRIOR TO AND DURING QUESTIONING INCIDENTAL TO AN INVESTIGATION.—If a law enforcement officer is subjected to questioning incidental to an investigation that may result in disciplinary action against the officer, the following minimum safeguards shall apply:

''(1) COUNSEL AND REPRESENTATION.—

''(A) IN GENERAL.—Any law enforcement officer under investigation shall be entitled to effective counsel by an attorney or representation by any other person who the officer chooses, such as an employee representative, or both, immediately before and during the entire period of any questioning session, unless the officer consents in writing to being questioned outside the presence of counsel or representative.

''(B) PRIVATE CONSULTATION.—During the course of any questioning session, the officer shall be afforded the opportunity to consult privately with counsel or a representative, if such consultation does not repeatedly and unnecessarily disrupt the questioning period.

''(C) UNAVAILABILITY OF COUNSEL.—If the counsel or representative of the law enforcement officer is not available within 24 hours of the time set for the commencement of any questioning of that officer, the investigating law enforcement agency shall grant a reasonable extension of time for the law enforcement officer to obtain counsel or representation.

''(2) REASONABLE HOURS AND TIME.—Any questioning of a law enforcement officer under investigation shall be conducted at a reasonable time when the officer is on duty, unless exigent circumstances compel more immediate questioning, or the officer agrees in writing to being questioned at a different time, subject to the requirements of subsections (e) and paragraph (1).

''(3) PLACE OF QUESTIONING.—Unless the officer consents in writing to being questioned elsewhere, any questioning of a law enforcement officer under investigation shall take place—

''(A) at the office of the individual conducting the investigation on behalf of the law enforcement agency employing the officer under investigation; or

''(B) the place at which the officer under investigation reports for duty.

''(4) IDENTIFICATION OF QUESTIONER.—Before the commencement of any questioning, a law enforcement officer under investigation shall be informed of—

''(A) the name, rank, and command of the officer or other individual who will conduct the questioning; and

''(B) the relationship between the individual conducting the questioning and the law enforcement agency employing the officer under investigation.

''(5) SINGLE QUESTIONER.—During any single period of questioning of a law enforcement officer under investigation, each question shall be asked by or through 1 individual.

''(6) REASONABLE TIME PERIOD.—Any questioning of a law enforcement officer under investigation shall be for a reasonable period of time and shall allow reasonable periods for the rest and personal necessities of the officer and the counsel or representative of the officer, if such person is present.

''(7) NO THREATS, FALSE STATEMENTS, OR PROMISES TO BE MADE.—

''(A) IN GENERAL.—Except as provided in subparagraph (B), no threat against, false or misleading statement to, harassment of, or promise of reward to a law enforcement officer under investigation shall be made to induce the officer to answer any question, give any statement, or otherwise provide information.

''(B) EXCEPTION.—The law enforcement agency employing a law enforcement officer under investigation may require the officer to make a statement relating to the investigation by explicitly threatening disciplinary action, including termination, only if—

''(i) the officer has received a written grant of use and derivative use immunity or transactional immunity by a person authorized to grant such immunity; and

''(ii) the statement given by the law enforcement officer under such an immunity may not be used in any subsequent criminal proceeding against that officer.

''(8) RECORDING.—

''(A) IN GENERAL.—All questioning of a law enforcement officer under an investigation shall be recorded in full, in writing or by electronic device, and a copy of the transcript shall be provided to the officer under investigation before any subsequent period of questioning or the filing of any charge against that officer.

''(B) SEPARATE RECORDING.—To ensure the accuracy of the recording, an officer may utilize a separate electronic recording device, and a copy of any such recording (or

the transcript) shall be provided to the public agency conducting the questioning, if that agency so requests.

''(9) USE OF HONESTY TESTING DEVICES PROHIBITED.—No law enforcement officer under investigation may be compelled to submit to the use of a lie detector, as defined in section 2 of the Employee Polygraph Protection Act of 1988 (29 U.S.C. 2001).

''(g) NOTICE OF INVESTIGATIVE FINDINGS AND DISCIPLINARY RECOMMENDATION AND OPPORTUNITY TO SUBMIT A WRITTEN RESPONSE.—

''(1) NOTICE.—Not later than 30 days after the conclusion of an investigation under this section, the person in charge of the investigation or the designee of that person shall notify the law enforcement officer who was the subject of the investigation, in writing, of the investigative findings and any recommendations for disciplinary action.

''(2) OPPORTUNITY TO SUBMIT WRITTEN RESPONSE.—

''(A) IN GENERAL.—Not later than 30 days after receipt of a notification under paragraph (1), and before the filing of any charge seeking the discipline of such officer or the commencement of any disciplinary proceeding under subsection (h), the law enforcement officer who was the subject of the investigation may submit a written response to the findings and recommendations included in the notification.

''(B) CONTENTS OF RESPONSE.—The response submitted under subparagraph (A) may include references to additional documents, physical objects, witnesses, or any other information that the law enforcement officer believes may provide exculpatory evidence.

''(h) DISCIPLINARY HEARINGS.—

''(1) NOTICE OF OPPORTUNITY FOR HEARING.—Except in a case of summary punishment or emergency suspension (subject to subsection (k)), before the imposition of any disciplinary action the law enforcement agency shall notify the officer that the officer is entitled to a due process hearing by an independent and impartial hearing officer or board.

''(2) REQUIREMENT OF DETERMINATION OF VIOLATION.—No disciplinary action may be taken against a law enforcement officer unless an independent and impartial hearing officer or board determines, after a hearing and in accordance with the requirements of this subsection, that the law enforcement officer committed a violation of law.

''(3) TIME LIMIT.—No disciplinary charge may be brought against a law enforcement officer unless—

''(A) the charge is filed not later than the earlier of—

''(i) 1 year after the date on which the law enforcement agency filing the charge had knowledge or reasonably should have had knowledge of an alleged violation of law; or

''(ii) 90 days after the commencement of an investigation; or

''(B) the requirements of this paragraph are waived in writing by the officer or the counsel or representative of the officer.

''(4) NOTICE OF HEARING.—Unless waived in writing by the officer or the counsel or representative of the officer, not later than 30 days after the filing of a disciplinary charge against a law enforcement officer, the law enforcement agency filing the charge shall provide written notification to the law enforcement officer who is the subject of the charge, of—

''(A) the date, time, and location of any disciplinary hearing, which shall be scheduled in cooperation with the law enforcement officer, or the counsel or representative of the officer, and which shall take place not earlier than 30 days and not later than 60 days after notification of the hearing is given to the law enforcement officer under investigation;

''(B) the name and mailing address of the independent and impartial hearing officer, or the names and mailing addresses of the independent and impartial hearing board members; and

''(C) the name, rank, command, and address of the law enforcement officer prosecuting the matter for the law enforcement agency, or the name, position, and mailing address of the person prosecuting the matter for a public agency, if the prosecutor is not a law enforcement officer.

''(5) ACCESS TO DOCUMENTARY EVIDENCE AND INVESTIGATIVE FILE.—Unless waived in writing by the law enforcement officer or the counsel or representative of that officer, not later than 15 days before a disciplinary hearing described in paragraph (4)(A), the law enforcement officer shall be provided with—

''(A) a copy of the complete file of the predisciplinary investigation; and

''(B) access to and, if so requested, copies of all documents, including transcripts, records, written statements, written reports, analyses, and electronically recorded information that—

''(i) contain exculpatory information;

''(ii) are intended to support any disciplinary action; or

''(iii) are to be introduced in the disciplinary hearing.

''(6) EXAMINATION OF PHYSICAL EVIDENCE.—Unless waived in writing by the law enforcement officer or the counsel or representative of that officer—

''(A) not later than 15 days before a disciplinary hearing, the prosecuting agency shall notify the law enforcement officer or the counsel or representative of that officer of all physical, non-documentary evidence; and

''(B) not later than 10 days before a disciplinary hearing, the prosecuting agency shall provide a reasonable date, time, place, and manner for the law enforcement officer or the counsel or representative of the law enforcement officer to examine the evidence described in subparagraph (A).

''(7) IDENTIFICATION OF WITNESSES.—Unless waived in writing by the law enforcement officer or the counsel or representative of the officer, not later than 15 days before a disciplinary hearing, the prosecuting agency shall notify the law enforcement officer or the counsel or representative of the officer, of the name and address of each witness for the law enforcement agency employing the law enforcement officer.

''(8) REPRESENTATION.—During a disciplinary hearing, the law enforcement officer who is the subject of the hearing shall be entitled to due process, including—

''(A) the right to be represented by counsel or a representative;

''(B) the right to confront and examine all witnesses against the officer; and

''(C) the right to call and examine witnesses on behalf of the officer.

''(9) HEARING BOARD AND PROCEDURE.—

''(A) IN GENERAL.—A State or local government agency, other than the law enforcement agency employing the officer who is subject of the disciplinary hearing, shall—

''(i) determine the composition of an independent and impartial disciplinary hearing board;

''(ii) appoint an independent and impartial hearing officer; and

''(iii) establish such procedures as may be necessary to comply with this section.

''(B) PEER REPRESENTATION ON DISCIPLINARY HEARING BOARD.—A disciplinary hearing board that includes employees of the law enforcement agency employing the law enforcement officer who is the subject of the hearing, shall include not less than 1 law enforcement officer of equal or lesser rank to the officer who is the subject of the hearing.

''(10) SUMMONSES AND SUBPOENAS.—

''(A) IN GENERAL.—The disciplinary hearing board or independent hearing officer—

''(i) shall have the authority to issue summonses or subpoenas, on behalf of—

''(I) the law enforcement agency employing the officer who is the subject of the hearing; or

''(II) the law enforcement officer who is the subject of the hearing; and

''(ii) upon written request of either the law enforcement agency or the officer, shall issue a summons or subpoena, as appropriate, to compel the appearance and testimony of a witness or the production of documentary evidence.

''(B) EFFECT OF FAILURE TO COMPLY WITH SUMMONS OR SUBPOENA.—With respect to any failure to comply with a summons or a subpoena issued under subparagraph (A)—

''(i) the disciplinary hearing officer or board shall petition a court of competent jurisdiction to issue an order compelling compliance; and

''(ii) subsequent failure to comply with such a court order issued pursuant to a petition under clause (i) shall—

''(I) be subject to contempt of a court proceedings according to the laws of the jurisdiction within which the disciplinary hearing is being conducted; and

''(II) result in the recess of the disciplinary hearing until the witness becomes available to testify and does testify or is held in contempt.

''(11) CLOSED HEARING.—A disciplinary hearing shall be closed to the public unless the law enforcement officer who is the subject of the hearing requests, in writing, that the hearing be open to specified individuals or to the general public.

''(12) RECORDING.—All aspects of a disciplinary hearing, including pre-hearing motions, shall be recorded by audio tape, video tape, or transcription.

''(13) SEQUESTRATION OF WITNESSES.—Either side in a disciplinary hearing may move for and be entitled to sequestration of witnesses.

''(14) TESTIMONY UNDER OATH.—The hearing officer or board shall administer an oath or affirmation to each witness, who shall testify subject to the laws of perjury of the State in which the disciplinary hearing is being conducted.

''(15) FINAL DECISION ON EACH CHARGE.—

''(A) IN GENERAL.—At the conclusion of the presentation of all the evidence and after oral or written argument, the hearing officer or board shall deliberate and render a written final decision on each charge.

''(B) FINAL DECISION ISOLATED TO CHARGE BROUGHT.—The hearing officer or board may not find that the law enforcement officer who is the subject of the hearing is liable for disciplinary action for any violation of law as to which the officer was not charged.

''(16) BURDEN OF PERSUASION AND STANDARD OF PROOF.—The burden of persuasion or standard of proof of the prosecuting agency shall be—

''(A) by clear and convincing evidence as to each charge alleging false statement or representation, fraud, dishonesty, deceit, moral turpitude, or criminal behavior on the part of the law enforcement officer who is the subject of the charge; and

''(B) by a preponderance of the evidence as to all other charges.

''(17) FACTORS OF JUST CAUSE TO BE CONSIDERED BY THE HEARING OFFICER OR BOARD.—A law enforcement officer who is the subject of a disciplinary hearing shall not be found guilty of any charge or subjected to any disciplinary action unless the disciplinary hearing board or independent hearing officer finds that—

''(A) the officer who is the subject of the charge could reasonably be expected to have

had knowledge of the probable consequences of the alleged conduct set forth in the charge against the officer;

''(B) the rule, regulation, order, or procedure that the officer who is the subject of the charge allegedly violated is reasonable;

''(C) the charging party, before filing the charge, made a reasonable, fair, and objective effort to discover whether the officer did in fact violate the rule, regulation, order, or procedure as charged;

''(D) the charging party did not conduct the investigation arbitrarily or unfairly, or in a discriminatory manner, against the officer who is the subject of the charge, and the charge was brought in good faith; and

''(E) the proposed disciplinary action reasonably relates to the seriousness of the alleged violation and to the record of service of the officer who is the subject of the charge.

''(18) NO COMMISSION OF A VIOLATION.—If the officer who is the subject of the disciplinary hearing is found not to have committed the alleged violation—

''(A) the matter is concluded;

''(B) no disciplinary action may be taken against the officer;

''(C) the personnel record of that officer shall not contain any reference to the charge for which the officer was found not guilty; and

''(D) any pay and benefits lost or deferred during the pendency of the disposition of the charge shall be restored to the officer as though no charge had ever been filed against the officer, including salary or regular pay, vacation, holidays, longevity pay, education incentive pay, shift differential, uniform allowance, lost overtime, or other premium pay opportunities, and lost promotional opportunities.

''(19) COMMISSION OF A VIOLATION.—

''(A) IN GENERAL.—If the officer who is the subject of the charge is found to have committed the alleged violation, the hearing officer or board shall make a written recommendation of a penalty to the law enforcement agency employing the officer or any other governmental entity that has final disciplinary authority, as provided by applicable State or local law.

''(B) PENALTY.—The employing agency or other governmental entity may not impose a penalty greater than the penalty recommended by the hearing officer or board.

''(20) APPEAL.—Any officer who has been found to have committed an alleged violation may appeal from a final decision of a hearing officer or hearing board to a court of competent jurisdiction or to an independent neutral arbitrator to the extent available in any other administrative proceeding under applicable State or local law, or a collective bargaining agreement.

''(i) WAIVER OF RIGHTS.—

''(1) IN GENERAL.—An officer who is notified that the officer is under investigation or is the subject of a charge may, after such notification, waive any right or procedure guaranteed by this section.

''(2) WRITTEN WAIVER.—A written waiver under this subsection shall be—

''(A) in writing; and

''(B) signed by—

''(i) the officer, who shall have consulted with counsel or a representative before signing any such waiver; or

''(ii) the counsel or representative of the officer, if expressly authorized by subsection (h).

''(j) SUMMARY PUNISHMENT.—Nothing in this section shall preclude a public agency from imposing summary punishment.

''(k) EMERGENCY SUSPENSION.—Nothing in this section may be construed to preclude a law enforcement agency from imposing an emergency suspension on a law enforcement officer, except that any such suspension shall—

''(1) be followed by a hearing in accordance with the requirements of subsection (h); and

''(2) not deprive the affected officer of any pay or benefit.

''(l) RETALIATION FOR EXERCISING RIGHTS.—There shall be no imposition of, or threat of, disciplinary action or other penalty against a law enforcement officer for the exercise of any right provided to the officer under this section.

''(m) OTHER REMEDIES NOT IMPAIRED.—Nothing in this section may be construed to impair any other right or remedy that a law enforcement officer may have under any constitution, statute, ordinance, order, rule, regulation, procedure, written policy, collective bargaining agreement, or any other source.

''(n) DECLARATORY OR INJUNCTIVE RELIEF.—A law enforcement officer who is aggrieved by a violation of, or is otherwise denied any right afforded by, the Constitution of the United States, a State constitution, this section, or any administrative rule or regulation promulgated pursuant thereto, may file suit in any Federal or State court of competent jurisdiction for declaratory or injunctive relief to prohibit the law enforcement agency from violating or otherwise denying such right, and such court shall have jurisdiction, for cause shown, to restrain such a violation or denial.

''(o) PROTECTION OF LAW ENFORCEMENT OFFICER PERSONNEL FILES.—

''(1) RESTRICTIONS ON ADVERSE MATERIAL MAINTAINED IN OFFICERS' PERSONNEL RECORDS.—

''(A) IN GENERAL.—Unless the officer has had an opportunity to review and comment, in writing, on any adverse material generated after the effective date of the State and Local Law Enforcement Discipline, Accountability, and Due Process Act of 2007 to be included in a personnel record relating to the officer, no law enforcement agency or other governmental entity may—

''(i) include the adverse material in that personnel record; or

''(ii) possess or maintain control over the adverse material in any form as a personnel record within the law enforcement agency or elsewhere in the control of the employing governmental entity.

''(B) RESPONSIVE MATERIAL.—Any responsive material provided by an officer to adverse material included in a personnel record pertaining to the officer shall be—

''(i) attached to the adverse material; and

''(ii) released to any person or entity to whom the adverse material is released in accordance with law and at the same time as the adverse material is released.

''(2) RIGHT TO INSPECTION OF, AND RESTRICTIONS ON ACCESS TO INFORMATION IN, THE OFFICER'S OWN PERSONNEL RECORDS.—

''(A) IN GENERAL.—Subject to subparagraph (B), a law enforcement officer shall have the right to inspect all of the personnel records of the officer not less than annually.

''(B) RESTRICTIONS.—A law enforcement officer shall not have access to information in the personnel records of the officer if the information—

''(i) relates to the investigation of alleged conduct that, if proven, would constitute or have constituted a definite violation of a statute providing for criminal penalties, but as to which no formal charge was brought;

''(ii) contains letters of reference for the officer;

''(iii) contains any portion of a test document other than the results;

''(iv) is of a personal nature about another officer, and if disclosure of that information in non-redacted form would constitute a clearly unwarranted intrusion into the privacy rights of that other officer; or

''(v) is relevant to any pending claim brought by or on behalf of the officer against the employing agency of that officer that may be discovered in any judicial or administrative proceeding between the officer and the employer of that officer.

''(p) STATES' RIGHTS.—

''(1) IN GENERAL.—Nothing in this section may be construed—

''(A) to preempt any State or local law, or any provision of a State or local law, in effect on the date of enactment of the State and Local Law Enforcement Discipline, Accountability, and Due Process Act of 2007, that confers a right or a protection that equals or exceeds the right or protection afforded by this section; or

''(B) to prohibit the enactment of any State or local law that confers a right or protection that equals or exceeds a right or protection afforded by this section.

''(2) STATE OR LOCAL LAWS PREEMPTED.—A State or local law, or any provision of a State or local law, that confers fewer rights or provides less protection for a law enforcement officer than any provision in this section shall be preempted by this section.

''(q) COLLECTIVE BARGAINING AGREEMENTS.—Nothing in this section may be construed to—

''(1) preempt any provision in a mutually agreed-upon collective bargaining agreement, in effect on the date of enactment of the State and Local Law Enforcement Discipline, Accountability, and Due Process Act of 2007, that provides for substantially the same or a greater right or protection afforded under this section; or

''(2) prohibit the negotiation of any additional right or protection for an officer who is subject to any collective bargaining agreement.''.

(b) TECHNICAL AMENDMENT.—The table of contents of title I of the Omnibus Crime Control and Safe Streets Act of 1968 (42 U.S.C. 3711 et seq.) is amended by inserting after the item relating to section 819 the following:

''Sec. 820. Discipline, accountability, and due process of State and local law enforcement officers.''.

SEC. 4. PROHIBITION OF FEDERAL CONTROL OVER STATE AND LOCAL CRIMINAL JUSTICE AGENCIES.

Nothing in this Act or the amendments made by this Act shall be construed to authorize any department, agency, officer, or employee of the United States to exercise any direction, supervision, or control of any police force or any criminal justice agency of any State or any political subdivision thereof.

SEC. 5. EFFECTIVE DATE.

The amendments made by this Act shall take effect with respect to each State on the earlier of—

(1) 2 years after the date of enactment of this Act; or

(2) the conclusion of the second legislative session of the State that begins on or after the date of enactment of this Act.

By Mr. AKAKA (for himself, Mr. COCHRAN, Mr. DODD, Mr. FEINGOLD, and Mr. DURBIN):

S. 451. A bill to establish a National Foreign language Coordination Council; to the Committee on Health, Education, Labor, and Pensions.

Mr. AKAKA. Mr. President, I am pleased to reintroduce the National Foreign Language Coordination Act with my colleagues Senators THAD COCHRAN, CHRISTOPHER DODD, and RUSSELL FEINGOLD. We are joined by

Representative BRIAN BAIRD, who is offering a companion bill in the House of Representatives today as well.

The legislation we introduce today would implement a key recommendation of the 2004 Department of Defense, DOD, National Language Conference to establish a National Foreign Language Coordination Council, chaired by a National Language Director. An integrated foreign language strategy and sustained leadership within the Federal Government is needed to address the lack of foreign language proficient speakers in government and in business. Without such a coordinated strategy, I fear that the country's national and economic security will be at greater risk.

The communications failures of 9/11 clearly demonstrate that we can no longer ignore the consequence of our citizens being unable to converse fluently in languages other than English. The fact that only 9.3 percent of all Americans speak both their native languages and another language fluently, compared with 56 percent of people in the European Union is troubling. The Iraq Study Group reported last month that of the 1,000 American embassy employees in Baghdad, only 33 speak Arabic, and just 6 of them are fluent in this critical language. The shortfall of skilled linguists prompted the Iraq Study Group to recommend that ''The Secretary of State, the Secretary of Defense, and the Director of National Intelligence should accord the highest possible priority to professional language proficiency and cultural training, in general and specifically for U.S. officers and personnel about to be assigned to Iraq.''

The Federal Government has an essential role to play by collaborating with educators, State and local governments, foreign language associations, and the private sector to increase the number of Americans who speak and understand foreign languages. A National Foreign Language Coordination Council brings these diverse interests together to shape a much needed, comprehensive approach. Just as I have advocated the need for deputy secretaries for management at the Departments of Defense and Homeland Security to direct and sustain management leadership, I envision a National Language Director to be responsible for maintaining and leading a cooperative effort to strengthen our foreign language capabilities.

Our Nation's security is at risk without a sufficient number of foreign language proficient individuals. Counterterrorism intelligence will go untranslated and opportunities will be missed. Equally important is preserving the economic competitiveness of the United States. Globalization means that Americans must compete for jobs in a marketplace no longer confined to the boundaries of the United States. In short, both the security and economic vitality of the United States are tied to improving foreign language education. However, according to the Committee on Economic Development, many of our schools do not have foreign language programs that address the educational challenges of the 21st century. Many American students lack sufficient knowledge of other countries, languages, and cultures to compete effectively in the global marketplace.

Specifically, our bill ensures that the key recommendations of the DOD National Language Conference will be implemented by: Developing policies and programs that build the Nation's language and cultural understanding capability; engaging Federal, State, and local agencies and the private sector in solutions; developing language and cultural competency across public and private sectors; developing language skills in a wide range of critical languages; strengthening our education system, programs, and tools in foreign languages and cultures; and integrating language training into career fields and increase the number of language professionals.

Last week, the Subcommittee on Oversight of Government Management, the Federal Workforce, and the District of Columbia, which I chair, held a hearing on the Federal Government's language strategy. Dr. Diane Birckbichler, director of the Foreign Language Center and chair of the Departments of French and Italian at Ohio State University, testified that ''if there is a national language strategy, it isn't very well known.'' She further recommended the development of a national language policy to create a language-ready workforce for the future.

To strengthen the role of the United States in the world, our country must ensure that there is a sufficient number of individuals who are proficient in languages other than their native languages. Increasing foreign language skills enhances national security, just as increasing foreign language skills enhances the ability of Americans to compete on a more global playing field.

I ask my colleagues to support this legislation and 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. 451

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

SECTION 1. ESTABLISHMENT OF NATIONAL FOREIGN LANGUAGE COORDINATION COUNCIL.

(a) SHORT TITLE.—This Act may be cited as the ''National Foreign Language Coordination Act of 2007''.

(b) ESTABLISHMENT.—There is established in the Executive Office of the President a National Foreign Language Coordination Council (in this section referred to as the ''Council'').

(c) MEMBERSHIP.—The Council shall consist of the following members or their designees:

(1) The National Language Director, who shall serve as the chairperson of the Council.

(2) The Secretary of Education.

(3) The Secretary of Defense.

(4) The Secretary of State.

(5) The Secretary of Homeland Security.

(6) The Attorney General.

(7) The Director of National Intelligence.

(8) The Secretary of Labor.

(9) The Director of the Office of Personnel Management.

(10) The Director of the Office of Management and Budget.

(11) The Secretary of Commerce.

(12) The Secretary of Health and Human Services.

(13) The Secretary of the Treasury.

(14) The Secretary of Housing and Urban Development.

(15) The Secretary of Agriculture.

(16) The Chairman and President of the Export-Import Bank of the United States.

(17) The heads of such other Federal agencies as the Council considers appropriate.

(d) RESPONSIBILITIES.—

(1) IN GENERAL.—The Council shall be charged with—

(A) overseeing, coordinating, and implementing the National Security Language Initiative;

(B) developing a national foreign language strategy, building upon the efforts of the National Security Language Initiative, within 18 months after the date of the enactment of this section, in consultation with—

(i) State and local government agencies;

(ii) academic sector institutions;

(iii) foreign language related interest groups;

(iv) business associations;

(v) industry;

(vi) heritage associations; and

(vii) other relevant stakeholders;

(C) conducting a survey of the status of Federal agency foreign language and area expertise and agency needs for such expertise; and

(D) monitoring the implementation of such strategy through—

(i) application of current and recently enacted laws; and

(ii) the promulgation and enforcement of rules and regulations.

(2) STRATEGY CONTENT.—The strategy developed under paragraph (1) shall include—

(A) recommendations for amendments to title 5, United States Code, in order to improve the ability of the Federal Government to recruit and retain individuals with foreign language proficiency and provide foreign language training for Federal employees;

(B) the long term goals, anticipated effect, and needs of the National Security Language Initiative;

(C) identification of crucial priorities across all sectors;

(D) identification and evaluation of Federal foreign language programs and activities, including—

(i) any duplicative or overlapping programs that may impede efficiency;

(ii) recommendations on coordination;

(iii) program enhancements; and

(iv) allocation of resources so as to maximize use of resources;

(E) needed national policies and corresponding legislative and regulatory actions in support of, and allocation of designated resources to, promising programs and initiatives at all levels (Federal, State, and local), especially in the less commonly taught languages that are seen as critical for national security and global competitiveness during the next 20 to 50 years;

(F) effective ways to increase public awareness of the need for foreign language skills and career paths in all sectors that can employ those skills, with the objective of increasing support for foreign language study among—

(i) Federal, State, and local leaders;
(ii) students;
(iii) parents;
(iv) elementary, secondary, and postsecondary educational institutions; and
(v) employers;
(G) recommendations for incentives for related educational programs, including foreign language teacher training;
(H) coordination of cross-sector efforts, including public-private partnerships;
(I) coordination initiatives to develop a strategic posture for language research and recommendations for funding for applied foreign language research into issues of national concern;
(J) recommendations for assistance for—
(i) the development of foreign language achievement standards; and
(ii) corresponding assessments for the elementary, secondary, and postsecondary education levels, including the National Assessment of Educational Progress in foreign languages;
(K) recommendations for development of—
(i) language skill-level certification standards;
(ii) frameworks for pre-service and professional development study for those who teach foreign language;
(iii) suggested graduation criteria for foreign language studies and appropriate non-language studies, such as—
(I) international business;
(II) national security;
(III) public administration;
(IV) health care;
(V) engineering;
(VI) law;
(VII) journalism; and
(VIII) sciences;
(L) identification of and means for replicating best practices at all levels and in all sectors, including best practices from the international community; and
(M) recommendations for overcoming barriers in foreign language proficiency.
(3) NATIONAL SECURITY LANGUAGE INITIATIVE.—The term ''National Security Language Initiative'' means the comprehensive national plan of the President announced on January 5, 2006, and under the direction of the Secretaries of State, Education, and Defense and the Director of National Intelligence to expand foreign language education for national security purposes in the United States.
(e) SUBMISSION OF STRATEGY TO PRESIDENT AND CONGRESS.—Not later than 18 months after the date of enactment of this section, the Council shall prepare and transmit to the President and the relevant committees of Congress the strategy required under subsection (d).
(f) MEETINGS.—The Council may hold such meetings, and sit and act at such times and places, as the Council considers appropriate, but shall meet in formal session at least 2 times a year. State and local government agencies and other organizations (such as academic sector institutions, foreign language-related interest groups, business associations, industry, and heritage community organizations) shall be invited, as appropriate, to public meetings of the Council at least once a year.
(g) STAFF.—
(1) IN GENERAL.—The Director may—
(A) appoint, without regard to the provisions of title 5, United States Code, governing the competitive service, such personnel as the Director considers necessary; and
(B) compensate such personnel without regard to the provisions of chapter 51 and subchapter III of chapter 53 of that title.
(2) DETAIL OF GOVERNMENT EMPLOYEES.—Upon request of the Council, any Federal Government employee may be detailed to the Council without reimbursement, and such detail shall be without interruption or loss of civil service status or privilege.
(3) EXPERTS AND CONSULTANTS.—With the approval of the Council, the Director may procure temporary and intermittent services under section 3109(b) of title 5, United States Code.
(4) TRAVEL EXPENSES.—Council members and staff shall be allowed travel expenses, including per diem in lieu of subsistence, at rates authorized for employees of agencies under subchapter I of chapter 57 of title 5, United States Code, while away from their homes or regular places of business in the performance of services for the Council.
(5) SECURITY CLEARANCE.—
(A) IN GENERAL.—Subject to subparagraph (B), the appropriate Federal agencies or departments shall cooperate with the Council in expeditiously providing to the Council members and staff appropriate security clearances to the extent possible pursuant to existing procedures and requirements.
(B) EXCEPTION.—No person shall be provided with access to classified information under this section without the appropriate required security clearance access.
(6) COMPENSATION.—The rate of pay for any employee of the Council (including the Director) may not exceed the rate payable for level V of the Executive Schedule under section 5316 of title 5, United States Code.

(h) POWERS.—
(1) DELEGATION.—Any member or employee of the Council may, if authorized by the Council, take any action that the Council is authorized to take in this section.
(2) INFORMATION.—
(A) COUNCIL AUTHORITY TO SECURE.—The Council may secure directly from any Federal agency such information, consistent with Federal privacy laws, including The Family Educational Rights and Privacy Act (20 U.S.C. 1232g) and Department of Education's General Education Provisions Act (20 U.S.C. 1232(h)), the Council considers necessary to carry out its responsibilities.
(B) REQUIREMENT TO FURNISH REQUESTED INFORMATION.—Upon request of the Director, the head of such agency shall furnish such information to the Council.
(3) DONATIONS.—The Council may accept, use, and dispose of gifts or donations of services or property.
(4) MAIL.—The Council may use the United States mail in the same manner and under the same conditions as other Federal agencies.

(i) CONFERENCES, NEWSLETTER, AND WEBSITE.—In carrying out this section, the Council—
(1) may arrange Federal, regional, State, and local conferences for the purpose of developing and coordinating effective programs and activities to improve foreign language education;
(2) may publish a newsletter concerning Federal, State, and local programs that are effectively meeting the foreign language needs of the nation; and
(3) shall create and maintain a website containing information on the Council and its activities, best practices on language education, and other relevant information.

(j) ANNUAL REPORT.—
(1) REQUIREMENT.—Not later than 90 days after the date of the enactment of this Act, and annually thereafter, the Council shall prepare and transmit to the President and the relevant committees of Congress a report that describes—
(A) the activities of the Council;
(B) the efforts of the Council to improve foreign language education and training; and
(C) impediments to the use of a National Foreign Language program, including any statutory and regulatory restrictions.
(2) RELEVANT COMMITTEES.—For purposes of paragraph (1), the relevant committees of Congress include—
(A) in the House of Representatives—
(i) the Committee on Appropriations;
(ii) the Committee on Armed Services;
(iii) the Committee on Education and Labor;
(iv) the Committee on Oversight and Government Reform;
(v) the Committee on Small Business;
(vi) the Committee on Foreign Affairs; and
(vii) the Permanent Select Committee on Intelligence;
(B) in the Senate—
(i) the Committee on Appropriations;
(ii) the Committee on Armed Services;
(iii) the Committee on Health, Education, Labor, and Pensions;
(iv) the Committee on Homeland Security and Governmental Affairs;
(v) the Committee on Foreign Relations; and
(vi) the Select Committee on Intelligence.

(k) ESTABLISHMENT OF A NATIONAL LANGUAGE DIRECTOR.—
(1) IN GENERAL.—There is established a National Language Director who shall be appointed by the President. The National Language Director shall be a nationally recognized individual with credentials and abilities across the sectors to be involved with creating and implementing long-term solutions to achieving national foreign language and cultural competency.
(2) RESPONSIBILITIES.—The National Language Director shall—
(A) develop and monitor the implementation of a national foreign language strategy, built upon the efforts of the National Security Language Initiative, across all sectors;
(B) establish formal relationships among the major stakeholders in meeting the needs of the Nation for improved capabilities in foreign languages and cultural understanding, including Federal, State, and local government agencies, academia, industry, labor, and heritage communities; and
(C) coordinate and lead a public information campaign that raises awareness of public and private sector careers requiring foreign language skills and cultural understanding, with the objective of increasing interest in and support for the study of foreign languages among national leaders, the business community, local officials, parents, and individuals.

(l) ENCOURAGEMENT OF STATE INVOLVEMENT.—
(1) STATE CONTACT PERSONS.—The Council shall consult with each State to provide for the designation by each State of an individual to serve as a State contact person for the purpose of receiving and disseminating information and communications received from the Council.
(2) STATE INTERAGENCY COUNCILS AND LEAD AGENCIES.—Each State is encouraged to establish a State interagency council on foreign language coordination or designate a lead agency for the State for the purpose of assuming primary responsibility for coordinating and interacting with the Council and State and local government agencies as necessary.

(m) CONGRESSIONAL NOTIFICATION.—The Council shall provide to Congress such information as may be requested by Congress, through reports, briefings, and other appropriate means.

(n) AUTHORIZATION OF APPROPRIATIONS.—There are authorized to be appropriated such sums as necessary to carry out this section.

By Mr. OBAMA (for himself, Mr. SCHUMER, Mr. LEAHY, Mr. CARDIN, Mr. FEINGOLD, Mr. KERRY, Mrs. FEINSTEIN, Mrs. CLINTON, Mrs. BOXER, and Mr. KENNEDY):

S. 453. A bill to prohibit deceptive practices in Federal elections; to the Committee on the Judiciary.

Mr. OBAMA. Mr. President, I am pleased to introduce a bill today that seeks to address the all-too-common efforts to deceive voters in order to keep them away from the polls.

It's hard to imagine that we even need a bill like this. But, unfortunately, there are people who will stop at nothing to try to deceive voters and keep them away from the polls. What's worse, these practices often target and exploit vulnerable populations, such as minorities, the disabled, or the poor.

We saw countless examples in this past election. Some of us remember the thousands of Latino voters in Orange County, California, who received letters warning them in Spanish that, ''if you are an immigrant, voting in a federal election is a crime that can result in incarceration.''

Or the voters in Maryland who received a ''democratic sample ballot'' featuring a Republican candidate for Governor and a Republican candidate for U.S. Senator.

Or the voters in Virginia who received calls from a so-called ''Virginia Elections Commission'' informing them—falsely—that they were ineligible to vote.

Or the voters who were told that they couldn't vote if they had family members who had been convicted of a crime.

Of course, these so-called warnings have no basis in fact, and are made with only one goal in mind—to keep Americans away from the polls. We see these problems year after year and election and after election, and my hope is that this bill will finally stop these practices in time for the next election.

That is why I am reintroducing the Deceptive Practices and Voter Intimidation Prevention Act. It's a bill that makes voter intimidation and deception punishable by law, and it contains strong penalties so that people who commit these crimes suffer more than just a slap on the wrist. The bill also seeks to address the real harm of these crimes—people who are prevented from voting by misinformation—by establishing a process for reaching out to these misinformed voters with accurate information so they can cast their votes in time.

Senator SCHUMER has joined me in introducing this legislation, and we are joined by our colleagues, Senator PATRICK LEAHY, Chairman of the Judiciary Committee, and Senators CARDIN, FEINGOLD, KERRY, FEINSTEIN and CLINTON as original co-sponsors to this bill.

There are some issues in this country that are inherently difficult and political. Making sure that every American can cast a ballot shouldn't be one of them. There is no place for politics in this debate—no room for those who feel that they can gain a partisan advantage by keeping people away from the polls. It's time to get this done in a bipartisan fashion, and I believe this bill can make it happen.

I ask unanimous consent that a New York Times editorial from January 31, 2007, be printed in the RECORD.

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

[From the New York Times, Jan. 31, 2007]

HONESTY IN ELECTIONS

On Election Day last fall in Maryland, fliers were handed out in black neighborhoods with the heading ''Democratic Sample Ballot'' and photos of black Democratic leaders—and boxes checked off beside the names of the Republican candidates for senator and governor. They were a blatant attempt to fool black voters into thinking the Republican candidates were endorsed by black Democrats. In Orange County, Calif., 14,000 Latino voters got letters in Spanish saying it was a crime for immigrants to vote in a federal election. It didn't say that immigrants who are citizens have the right to vote.

Dirty tricks like these turn up every election season, in large part because they are so rarely punished. But two Democratic senators, Barack Obama of Illinois and Charles Schumer of New York, are introducing a bill today that would make deceiving or intimidating voters a federal crime with substantial penalties.

The bill aims at some of the most commonly used deceptive political tactics. It makes it a crime to knowingly tell voters the wrong day for an election. There have been numerous reports of organized efforts to use telephones, leaflets or posters to tell voters, especially in minority areas, not to vote on Election Day because voting has been postponed.

The bill would also criminalize making false claims to voters about who has endorsed a candidate, or wrongly telling people—like immigrants who are registered voters in Orange County—that they cannot vote.

Along with defining these crimes and providing penalties of up to five years' imprisonment, the bill would require the Justice Department to counteract deceptive election information that has been put out, and to report to Congress after each election on what deceptive practices occurred and what the Justice Department did about them.

The bill would also allow individuals to go to court to stop deceptive practices while they are happening. That is important, given how uninterested the current Justice Department has proved to be in cracking down on election season dirty tricks.

The bill is careful to avoid infringing on First Amendment rights, and that is the right course. But in steering clear of regulating speech, it is not clear how effective the measure would be in addressing one of the worst dirty tricks of last fall's election: a particular kind of deceptive ''robocall'' that was used against Democratic Congressional candidates. These calls, paid for by the Republicans, sounded as if they had come from the Democrat; when a recipient hung up, the call was repeated over and over. The intent was clearly to annoy the recipients so they would not vote for the Democrat.

While there are already laws that can be used against this sort of deceptive telephone harassment, a more specific bill aimed directly at these calls is needed. But the bill being introduced today is an important step toward making elections more honest and fair. There is no reason it should not be passed by Congress unanimously.

Mr. SCHUMER. Mr. President, I rise today to join with Senator OBAMA in introducing landmark legislation to protect the most sacred right of our democracy: the right to vote. The Obama-Schumer Deceptive Practices and Voter Intimidation Prevention Act of 2007 will end the deceptive practices that have become far too common in recent elections.

At the outset, I want to commend my colleague from Illinois, Senator OBAMA, for his leadership on this important issue. It has been a great pleasure to work with him to draft this bill. I am also proud that we are joined by Senators LEAHY, CARDIN, FEINGOLD, KERRY, FEINSTEIN, and CLINTON as original cosponsors of this legislation.

We all know that there is an urgent need for this legislation. The right to vote is the wellspring of our democracy. Yet Americans have been profoundly shocked and disgusted in recent elections to see so many cynical attempts to lie to voters in order to keep them from casting their ballots.

Let me give just a few examples. In last year's mid-term election, letters in Spanish were sent to voters in Orange County, CA, stating that it is a crime for an immigrant to vote. In fact, immigrants who are naturalized citizens have the right to vote just as any other American citizen does.

In 2006, as well, fliers were handed out on election day in Maryland that gave the impression that top Republican candidates for office were Democratic candidates and were endorsed by prominent African Americans. These fliers were a clear and deliberate attempt to mislead voters.

In Virginia, registered voters received recorded calls that falsely stated that the recipient of the call was registered in another State and would face criminal charges if they came to the polls.

These dirty tricks are not new. In 2002, fliers were distributed in public housing complexes in Louisiana, telling people that they could cast their votes 3 days after election day if the weather was bad.

These schemes insult the intelligence of those they target, and they insult our democracy. Yet they actually seem to be growing more common. The shameful reality is that today, Federal law does not prohibit wrongdoers from spreading these lies.

It is high time for Congress to do something about this disgraceful state of affairs. The Obama-Schumer bill creates a new offense of voter deception. Under our legislation, anyone who intentionally lies to voters about certain key information will now face both civil penalties and criminal punishment of up to 5 years in prison or a $100,000 fine.

The Obama-Schumer bill covers the facts that are most critical for reaching the polls—facts like where, when,

and how you can vote; whether you are eligible to vote; or whether an organization has actually endorsed a candidate. When voters are being misled about these core facts, the right to vote is nothing more than a hollow promise. It is a real threat to the right to vote when criminal elements are deliberately lying about something as basic—yet as important—as the date of the election. These types of lies are the poll taxes of today. They are being used to build a barrier around polling places and to disenfranchise voters in the most cynical and destructive way.

Even when misinformation campaigns are not successful, because voters are too smart and too determined to reach the polls, these deceptive practices make a mockery out of the great tradition of American democracy. These despicable attempts have gone unpunished for far too long. The Obama-Schumer bill provides strong penalties to deter and punish the offense of voter deception.

The Obama-Schumer bill will also increase the maximum penalty for voter intimidation from 1 year to 5 years in prison. Someone who tries to keep voters away from the polls with threats should not be released with a slap on the wrist, and our bill will create real penalties for this crime.

Finally, our legislation also ensures that lies do not go unanswered and pass for truth. Under the Obama-Schumer bill, the Department of Justice will be responsible for getting the correct information out to voters so that they can get to the polls and cast their vote without undue confusion.

As a check on whether elections are being tainted by these practices, after each election, the Attorney General will have to report to Congress about allegations of voter deception and how they were handled. We want to make sure that the Department of Justice uses the new tools that would be provided under this bill. The Attorney General's reports will give us a foundation for vigorous oversight.

Let me also be clear about what this legislation does not do. Senator OBAMA and I have taken great care to craft a bill that will not run afoul of the first amendment or prevent Americans from expressing their political opinions. Our bill strikes a balance between the need for political debate and the fundamental right to vote. It is narrowly tailored: it applies only to activities within 60 days prior to an election, and it covers only the key facts that voters need to reach the polls and cast their votes without interference. This bill will not limit legitimate debate, and it will not punish honest mistakes. It is clear from the dirty tricks that America has witnessed in recent elections that the Congress has a compelling interest in protecting the right to vote by regulating false speech that disenfranchises voters. We have a responsibility to act on that interest for the sake of all Americans.

The Obama-Schumer Deceptive Practices and Voter Intimidation Prevention Act of 2007 will finally criminalize efforts to keep voters away from the polls with deliberate lies. I hope and trust that the Congress will take up our bill and pass it without delay.

Mr. LEAHY. Mr. President, today, I join Senators OBAMA, SCHUMER, CARDIN, FEINSTEIN, FEINGOLD, CLINTON, and KERRY to introduce the Deceptive Practices and Voter Intimidation Prevention Act of 2007, a measure that would create new protections and expand existing protections against the use of deceptive practices in elections.

There are few things as critical to the fabric of our Nation, and to American citizenship, as voting. The right to vote and to have your vote count is a foundational right, like our first amendment rights, because it secures the effectiveness of other protections. The legitimacy of our government is dependent on the access all Americans have to the political process.

We saw last year in nearly 20 hearings in the House and Senate on the reauthorization of the Voting Rights Act that there is a continuing need for the vital voting rights protections that landmark civil rights law provides for all Americans. But our need to protect the effective access of voters to the political process does not stop with those vital protections against discrimination. I am concerned about increasing efforts on behalf of some candidates and political parties to interfere with recent elections and undermine the participation of many voters. So today we take another step toward protecting the exercise of the effective exercise of voting rights by ensuring that the access to vote is not undermined by those who would take away that access through deceit and false information.

The Deceptive Practices and Voter Intimidation Prevention Act of 2007 would provide additional tools and criminal penalties to help combat the kinds of practices used during the 2006 midterms in places like Maryland and Virginia. In Maryland, Republican leaders admitted to distributing misleading flyers in African-American communities on election day suggesting that prominent African-American Democrats supported Republican candidates. In Virginia, the FBI has investigated calls received by many voters in heavily Democratic precincts directing them to the wrong polling sites, giving incorrect information about their eligibility to vote, or encouraging them not to vote on election day. I supported a similar bill, S. 1975, in the last Congress, and I hope that we can move forward in this Congress.

Regrettably, the problems leading up to and on election day last year were not limited to a few isolated incidents. In the ninth precinct in Tucson, AZ, an area with a heavy percentage of Latino voters, it has been reported that three vigilantes armed with a clipboard, a video camera, and a visible firearm stopped only Latino voters as they entered and exited the polls on election day, issuing implied and overt threats. In Orange County, CA, Republican congressional candidate Tan Nguyen admitted that his campaign staffer sent letters to 73,000 households, spreading misinformation about voting requirements apparently designed to suppress Latino voter turnout.

In letters to the Attorney General and other officials at the Justice Department and in oversight hearings last November and 2 weeks ago, we have asked the Justice Department for more information about what it has been doing to investigate and combat these practices. In the information we have obtained so far, it is apparent that the Justice Department has not done enough and additional tools are needed.

The Deceptive Practices and Voter Intimidation Prevention Act of 2007 would expand the conduct currently prohibited by law to include the dissemination of false information within 60 days of an election about the time, place, and manner of the election, the qualifications for voter eligibility, or the sponsor of public communications about an election. In addition, it would provide new means of enforcing these prohibitions and combating such dissemination: it creates a private right of action for persons aggrieved by the dissemination of such false information; it provides criminal penalties for such false dissemination of up to 5 years and $100,000; and it provides that any person may report such false dissemination to the Attorney General, and if it is determined that such information is false or deliberately misleading, the Justice Department would be required to take action to provide corrective information. In addition, this bill provides an additional tool for effective oversight by requiring the Attorney General to report to Congress on allegations of the dissemination of false information within 90 days of an election.

By passing this bill and enacting it into law, we can continue our march towards a more inclusive democracy for all Americans.

Mr. KENNEDY. Mr. President, it's a privilege to join Senator OBAMA and our other colleagues in sponsoring the Deceptive Practices and Voter Intimidation Prevention Act, because it addresses an essential aspect of voting rights. For too long, we've ignored the festering problem of deceptive practices intended to intimidate and deceive voters in our national elections and suppress the vote of certain minority groups for partisan gain. The problem is a continuing threat to our democracy, and it's up to our new Congress to outlaw such practices, and I commend the Senator from Illinois for his leadership on this basic challenge.

In doing so, we must be vigilant to ensure that the bill does not erode the important division of responsibility in the Department of Justice between civil rights enforcement by the Civil Rights Division and the efforts by the Criminal Division to combat voter fraud. That division of responsibility is essential to convincing voters, particularly those in poor or minority communities to have the trust necessary to work with the Civil Rights Division and to inform it of possible civil rights violations. The bill should clearly provide that, as traditionally has been the case, the Voting Section of the Civil Rights Division may not investigate matters of voter fraud, although it

may provide technical advice and assistance to other parts of the Department in carrying out the requirements of this legislation.

We also need to guarantee that additional resources are appropriated to carry out the bill's requirements, so that resources will not be diverted from other important law enforcement activities of the Department.

In addition, we must ensure that the bill's civil and criminal provisions are not misused to erode voter participation even further, particularly among poor and minority voters by wrongly targeting voter registration activities or chilling legitimate get-out-the-vote efforts by organizations serving the public interest.

I look forward very much to working with my colleagues to deal with these specific issues, and to enact this important new measure as part of our fundamental responsibility to protect the most basic right in our democracy, the right to vote.

By Ms. COLLINS:

S. 454. A bill to provide an increase in funding for Federal Pell Grants, to amend the Internal Revenue Code of 1986 in order to expand the deduction for interest paid on student loans, raise the contribution limits for Coverdell Education Savings Accounts, and make the exclusion for employer provided educational assistance permanent, and for other purposes; to the Committee on Finance.

Ms. COLLINS. Mr. President, I rise today to introduce the Improving Access to Higher Education Act. This legislation would provide an increase in the maximum Pell grant award to $5,100, as well as additional benefits to help make higher education more accessible and affordable.

Our system of higher education is, in many ways, the envy of the world, but its benefits have not been equally available. Unfortunately, family income still largely determines whether students will pursue higher education. Students from families with incomes above $75,000 are more than twice as likely to attend college as students from families with incomes of less than $25,000.

To help remedy these inequities, the Federal Government has committed itself to a need-based system of student financial aid designed to help remove the economic barriers to higher education. Central to this effort over the past 30 years has been the Pell grant program.

The Pell Grant Program is the largest source of Federal grant aid and the cornerstone of our Federal need-based aid system. In 2006, the Pell program provided approximately $13 billion in grant aid to more than 5.3 million students. Students with the greatest need receive the maximum Pell award, which is currently set at $4,050. And Pell grants are truly targeted to the neediest of students—Pell recipients have a median family income of only $15,200.

Because of the central role of the Pell Grant Program, I am deeply concerned by the significant erosion in the purchasing power of the Pell grant that has occurred in recent years. In 1975, the maximum Pell grant represented approximately 80 percent of the costs of attending a public, 4-year institution. Today, it covers only 33 percent of these costs.

When lower levels of grant aid are available, students are forced to make up the difference by taking on larger and larger amounts of debt to finance their education. Earlier this month, I met with two students from the University of Southern Maine who told me that students graduating from 4-year institutions in Maine leave with an average debt of $20,239. As startling as this figure may be, it underestimates the true indebtedness of students, since it does not take into account credit card debt or private loans that students use to help finance their education.

The decline in the value of grant aid and the growing reliance on loans have particularly negative consequences for low-income students. In fact, the staggering amount of debt required to finance higher education may force some low-income students to abandon their plans to attend college altogether.

As explained in a recent report by the Educational Policy Institute, ''Grants for Students: What they do, Why they work,'' people from lower-income backgrounds often place a higher value on having money to meet pressing current needs, and accordingly, are less likely to make investments where the financial return comes only in the long term. According to the report, ''[L]ong term poverty encourages short-term thinking and those who experience it tend to identify very strongly with the expression 'one in the hand is worth two in the bush.' '' This is just one reason why the availability of loans does not solve the college access problem for low-income students, and why grant aid is so crucial.

That is why today I am introducing legislation that will raise the maximum Pell grant award to $5,100, an increase of more tha $1,000 in a single year. While I recognize that this represents a significant increase in a single year, this increase is long overdue. The maximum grant award has been essentially level-funded since Fiscal Year 2002. If we do not act soon Fiscal Year 2007 will become the fifth year in a row that the Pell maximum award has been level-funded.

By raising the maximum award to $5,100, my home state of Maine will receive approximately $60 million in Pell grant funding, an increase of over $15 million from current levels. This level of funding would provide Pell grants to more than 20,000 Maine students.

I recently met with Andrew Bossie, a first-generation college student from my hometown of Caribou, about the importance of Pell grants. Andrew is currently a student at the University of Southern Maine and will graduate this spring, in large part, because of the help of Pell grants. As Andrew told me, ''Without Pell grants, there is no doubt that I would not have been able to attend college. Although the current Pell grant award is a huge help, I still feel the stress of sometimes having to decide between a badly-needed new pair of shoes and making my tuition payments.'' Andrew is thriving academically—he is on the Dean's list—and he is also the student body president and is active as a community volunteer.

Increasing the maximum Pell award by $1,050 is going to make a real difference for Andrew and other students in their ability to pursue their college dreams. While I recognize that an increase to $5,100 in a single year is an ambitious goal, it is a worthy one for a nation that understands the opportunities that a college education brings.

My legislation also amends the Higher Education Act to raise the minimum Pell award to $500, up from the current minimum of $400. The minimum award level has not been increased in over 10 years. I believe we should ensure that every student who qualifies for a Pell receives at least $500.

In addition to our efforts on behalf of Pell grants, there are other important steps we can take to put higher education in the reach of more families. Ten years ago, in my first year as a Senator, I introduced S. 930, the ''College Affordability and Access Act,'' which contained three provisions designed to expand access to higher education, and reduce its cost. These three provisions were enacted into law, in amended form, as part of the Taxpayer Relief Act of 1997.

The proposal I am submitting today builds upon each of those three provisions. First, in recognition of the increased cost of higher education, my proposal calls for an increase in the tax deduction available for interest paid on higher education loans. Second, my proposal calls for a similar increase in the contribution limit for tax-free Coverdell Education Savings Accounts. Third, the bill would make permanent the current tax-free treatment of employer-provided educational assistance programs.

The value of the tax relief we provided 10 years ago has not kept pace with the rising cost of higher education. According to data from the College Board, 4-year private colleges now charge $30,000 per year for tuition, fees, room, and board. Even after taking inflation into account, this represents an increase of more than $6,000 since the 1996–1997 school year. Perhaps even more troubling, the College Board reports that the rate of increase has actually been sharper at public 4-year institutions than their private counterparts. Ten years ago, students attending any of America's excellent public universities would have paid, on average, just over $9,000 to cover tuition, fees, room, and board. Today, these

students can expect to pay nearly $12,800—an increase of 38 percent after taking inflation into account.

By contrast, the student loan interest deduction we provided as part of the Taxpayer Relief Act of 1997 remains at $2,500. It is time that we raise this cap to $3,750, a 50-percent increase. Doing so is a step toward recognizing that investments in higher education are essential to the health of our economy in an increasingly global, competitive marketplace.

I also believe it is necessary to increase the contribution limits for Coverdell Education Savings Accounts. Under current law, taxpayers may make contributions of up to $2,000 per year to these tax-free higher education accounts. In light of the inflation in college costs that I have already described, I believe this contribution limit ought to be increased to $3,000 per year.

Finally, my proposal would also extend current education benefits provided to employees through their employers. Under current law, a taxpayer may receive, tax free, up to $5,250 in education benefits through their employers each year. This provision helps both companies and their employees. Companies that provide this benefit get a workforce that is current with the latest methods and technologies in the field, while their employees get the training they need to advance through the ranks. Unfortunately, this provision expires on December 31, 2010. I propose that it be made permanent.

Now is the time for us to make a commitment to raising the Pell maximum award to $5,100, and to providing additional relief to families struggling to afford higher education. Investing in higher education is crucial to our economic future and competitiveness in the global economy, and my legislation represents a sound investment towards making the dream of a college education a reality for more Americans. I hope my colleagues will join me in supporting this legislation.

By Mr. KERRY:

S. 455. A bill to amend the Internal Revenue Code of 1986 to provide tax relief to active duty military personnel and employers who assist them, and for other purposes; to the Committee on Finance.

Mr. KERRY. Mr. President, today Senator SMITH and I are introducing the Active Duty Military Tax Relief Act of 2007. This legislation will help those who are valiantly serving their country and the families that they leave behind.

The best definition of patriotism is keeping faith with those who wear the uniform of our country. That means giving our troops the resources they need to keep them safe while they are protecting us. And it means supporting our troops at home as well as abroad.

Currently, there are over 132,000 military personnel serving in Iraq and more are on the way. There are approximately 22,100 U.S. servicemembers in Afghanistan. Many of these men and women are reservists and have been called to activity duty, frequently for multiple tours. Often they own, or are employed, by a small business and their activation results in hardship for the business.

Small businesses with less than 100 employees employ about 18 percent of all reservists who hold civilian jobs. Most large businesses have the resources to provide supplemental income to reservist employees called up and to replace them with temporary employees. I applaud the businesses that have been able to pay supplemental income to their reservists, but it is not easy for small businesses to do the same.

Earlier today, the Small Business and Entrepreneurship Committee held a hearing on veterans' small business issues. A majority of our veterans returning from Iraq and Afghanistan are Reserve and National Guard members—35 percent of whom are either self-employed or own or are employed by a small business.

We heard some disturbing statistics about the impact and unintended consequences the callup of reservists is having on small businesses. According to a January 2007 survey conducted by Workforce Management, 54 percent of the businesses surveyed responded that they would not hire a citizen soldier if they knew that they could be called up for an indeterminate amount of time. I am concerned that long callups have made it hard for small businesses to be supportive of civilian soldiers.

The Active Duty Military Tax Relief Act of 2007 provides a tax credit to small businesses with fewer than 100 employees and the self-employed to help with the cost of paying the salary of their reservist employees when they are called to active duty. This legislation also provides an additional tax credit to help offset the cost of hiring temporary employees to fill vacancies left by the servicemembers.

Many reservists who own their own business return from duty to find that their business is floundering. These tax credits will help reservists who own their own businesses to hire temporary employees for the duration of their tour as well as to assist small businesses deal with the impact of having an essential employee called up for active duty.

In addition to helping small businesses, the Active Duty Military Tax Relief of 2007 addresses concerns related to differential military pay, income tax withholding, and retirement plan participation. These provisions will make it easier for employers who would like to pay their employees supplemental income, above their military pay, and make pension contributions. Our legislation would make differential military pay subject to Federal income tax withholding. In addition, with respect to the retirement plan rules, the bill provides that a person receiving differential military pay would be treated as an employee of the employer making the payment and allows the differential military pay to be treated as compensation.

This bill also attempts to mitigate the financial strains placed on our military families while the family member is deployed. To help ease some of this burden, the Active Duty Military Tax Relief Act of 2007 would increase the standard deduction for active duty military personnel by $1,000 for 2007 and 2008. In addition, this legislation would make permanent the existing provision which allows taxpayers to include combat pay as earned income for purposes of the earned income tax credit (EITC). Without this provision some military families would no longer be eligible to receive the EITC because combat pay is currently not taxable.

Last Congress, Senator SMITH and I introduced the Fallen Heroes Family Savings Act, which we have incorporated into the Active Duty Military Tax Relief Act. This provision provides tax relief for the death gratuity payment that is given to families that have lost a loved one in combat. This payment is currently $100,000.

Our current tax laws do not allow the recipients of this payment to use it to make contributions to tax-preferred saving accounts that help with saving for retirement, health care, or the costs of education. Our legislation would allow military death gratuities to be contributed to certain tax-preferred accounts. These contributions would be treated as qualified rollovers. The contribution limits of these accounts will not be applied to these contributions.

Our service men and women need to know that we are honoring their valor by taking care of those they leave behind. Helping ease the tax burden on the death gratuity will enable military families to save more for retirement, education, and health care by allowing them to put the payment in an account in which the earnings will accumulate tax-free.

These changes to our tax laws will help our military families with some of their financial burdens. It cannot repay the sacrifices they have made for us, but it is a small way we can support our troops and their families at home as well as abroad.

The National Military Family Association, the Reserve Officers Association, and The Military Coalition (a consortium of veterans and military organizations representing more than 5.5 million members plus their families and survivors) support this legislation.

I ask unanimous consent that the text of this legislation 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. 455

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 ''Active Duty Military Tax Relief Act of 2007''.

SEC. 2. CREDIT FOR INCOME DIFFERENTIAL FOR EMPLOYMENT OF ACTIVATED MILITARY RESERVIST AND REPLACEMENT PERSONNEL.

(a) IN GENERAL.—Subpart B of part IV of subchapter A of chapter 1 of the Internal Revenue Code of 1986 (relating to foreign tax credit, etc.) is amended by adding at the end the following new section:

''SEC. 30C. EMPLOYER WAGE CREDIT FOR ACTIVATED MILITARY RESERVISTS.

''(a) GENERAL RULE.—There shall be allowed as a credit against the tax imposed by this chapter for the taxable year an amount equal to the sum of—

''(1) in the case of an eligible small business employer, the employment credit with respect to all qualified employees and qualified replacement employees of the taxpayer, plus

''(2) the self-employment credit of a qualified self-employed taxpayer.

''(b) EMPLOYMENT CREDIT.—For purposes of this section—

''(1) QUALIFIED EMPLOYEES.—

''(A) IN GENERAL.—The employment credit with respect to a qualified employee of the taxpayer for any taxable year is equal to 40 percent of so much of the excess (if any) paid by the taxpayer to such qualified employee of—

''(i) the qualified employee's average daily qualified compensation for the taxable year, over

''(ii) the average daily military pay and allowances received by the qualified employee during the taxable year while participating in qualified reserve component duty to the exclusion of the qualified employee's normal employment duties,

for the aggregate number of days the qualified employee participates in qualified reserve component duty during the taxable year (including time spent in a travel status) as does not exceed $25,000. The employment credit, with respect to all qualified employees, is equal to the sum of the employment credits for each qualified employee under this subsection.

''(B) AVERAGE DAILY QUALIFIED COMPENSATION AND AVERAGE DAILY MILITARY PAY AND ALLOWANCES.—As used with respect to a qualified employee—

''(i) the term 'average daily qualified compensation' means the qualified compensation of the qualified employee for the taxable year divided by 365, and

''(ii) the term 'average daily military pay and allowances' means—

''(I) the amount paid to the qualified employee during the taxable year as military pay and allowances on account of the qualified employee's participation in qualified reserve component duty, divided by

''(II) the total number of days the qualified employee participates in qualified reserve component duty, including time spent in travel status.

''(C) QUALIFIED COMPENSATION.—When used with respect to the compensation paid to a qualified employee for any period during which the qualified employee participates in qualified reserve component duty, the term 'qualified compensation' means—

''(i) compensation which is normally contingent on the qualified employee's presence for work and which would be deductible from the taxpayer's gross income under section 162(a)(1) if the qualified employee were present and receiving such compensation,

''(ii) compensation which is not characterized by the taxpayer as vacation or holiday pay, or as sick leave or pay, or as any other form of pay for a nonspecific leave of absence, and with respect to which the number of days the qualified employee participates in qualified reserve component duty does not result in any reduction in the amount of vacation time, sick leave, or other nonspecific leave previously credited to or earned by the qualified employee, and

''(iii) group health plan costs (if any) with respect to the qualified employee.

''(D) QUALIFIED EMPLOYEE.—The term 'qualified employee' means a person who—

''(i) has been an employee of the taxpayer for the 91-day period immediately preceding the period during which the employee participates in qualified reserve component duty, and

''(ii) is a member of the Ready Reserve of a reserve component of an Armed Force of the United States as defined in sections 10142 and 10101 of title 10, United States Code.

''(2) QUALIFIED REPLACEMENT EMPLOYEES.—

''(A) IN GENERAL.—The employment credit with respect to a qualified replacement employee of the taxpayer for any taxable year is equal to 40 percent of so much of the individual's qualified compensation attributable to service rendered as a qualified replacement employee as does not exceed $15,000. The employment credit, with respect to all qualified replacement employees, is equal to the sum of the employment credits for each qualified replacement employee under this subsection.

''(B) QUALIFIED COMPENSATION.—When used with respect to the compensation paid to a qualified replacement employee, the term 'qualified compensation' means—

''(i) compensation which is normally contingent on the qualified replacement employee's presence for work and which is deductible from the taxpayer's gross income under section 162(a)(1),

''(ii) compensation which is not characterized by the taxpayer as vacation or holiday pay, or as sick leave or pay, or as any other form of pay for a nonspecific leave of absence, and

''(iii) group health plan costs (if any) with respect to the qualified replacement employee.

''(C) QUALIFIED REPLACEMENT EMPLOYEE.—The term 'qualified replacement employee' means an individual who is hired to replace a qualified employee or a qualified self-employed taxpayer, but only with respect to the period during which such employee or taxpayer participates in qualified reserve component duty, including time spent in travel status, and, in the case of a qualified employee, is receiving qualified compensation (as defined in paragraph (1)(C)) for which an employment credit is allowed as determined under paragraph (1).

''(c) SELF-EMPLOYMENT CREDIT.—For purposes of this section—

''(1) IN GENERAL.—The self-employment credit of a qualified self-employed taxpayer for any taxable year is equal to 40 percent of so much of the excess (if any) of—

''(A) the qualified self-employed taxpayer's average daily qualified compensation for the taxable year, over

''(B) the average daily military pay and allowances received by the taxpayer during the taxable year while participating in qualified reserve component duty to the exclusion of the taxpayer's normal self-employment duties,

for the aggregate number of days the taxpayer participates in qualified reserve component duty during the taxable year (including time spent in a travel status) as does not exceed $25,000.

''(2) AVERAGE DAILY QUALIFIED COMPENSATION AND AVERAGE DAILY MILITARY PAY AND ALLOWANCES.—As used with respect to a qualified self-employed taxpayer—

''(A) the term 'average daily qualified compensation' means the qualified compensation of the qualified self-employed taxpayer for the taxable year divided by 365 days, and

''(B) the term 'average daily military pay and allowances' means—

''(i) the amount paid to the taxpayer during the taxable year as military pay and allowances on account of the taxpayer's participation in qualified reserve component duty, divided by

''(ii) the total number of days the taxpayer participates in qualified reserve component duty, including time spent in travel status.

''(3) QUALIFIED COMPENSATION.—When used with respect to the compensation paid to a qualified self-employed taxpayer for any period during which the qualified self-employed taxpayer participates in qualified reserve component duty, the term 'qualified compensation' means—

''(A) the self-employment income (as defined in section 1402(b) of the taxpayer which is normally contingent on the taxpayer's presence for work,

''(B) compensation which is not characterized by the taxpayer as vacation or holiday pay, or as sick leave or pay, or as any other form of pay for a nonspecific leave of absence, and

''(C) the amount paid for insurance which constitutes medical care for the taxpayer for such year (within the meaning of section 162(l)).

''(4) QUALIFIED SELF-EMPLOYED TAXPAYER.—The term 'qualified self-employed taxpayer' means a taxpayer who—

''(A) has net earnings from self-employment (as defined in section 1402(a)) for the taxable year, and

''(B) is a member of the Ready Reserve of a reserve component of an Armed Force of the United States.

''(d) COORDINATION WITH OTHER CREDITS.—The amount of credit otherwise allowable under this chapter with respect to compensation paid to any employee shall be reduced by the credit allowed by this section with respect to such employee.

''(e) LIMITATIONS.—

''(1) APPLICATION WITH OTHER CREDITS.—The credit allowed under subsection (a) for any taxable year shall not exceed the excess (if any) of—

''(A) the regular tax for the taxable year reduced by the sum of the credits allowable under subpart A and sections 27, 29, and 30, over

''(B) the tentative minimum tax for the taxable year.

''(2) DISALLOWANCE FOR FAILURE TO COMPLY WITH EMPLOYMENT OR REEMPLOYMENT RIGHTS OF MEMBERS OF THE RESERVE COMPONENTS OF THE ARMED FORCES OF THE UNITED STATES.—No credit shall be allowed under subsection (a) to a taxpayer for—

''(A) any taxable year, beginning after the date of the enactment of this section, in which the taxpayer is under a final order, judgment, or other process issued or required by a district court of the United States under section 4323 of title 38 of the United States Code with respect to a violation of chapter 43 of such title, and

''(B) the 2 succeeding taxable years.

''(3) DISALLOWANCE WITH RESPECT TO PERSONS ORDERED TO ACTIVE DUTY FOR TRAINING.—No credit shall be allowed under subsection (a) to a taxpayer with respect to any period by taking into account any person who is called or ordered to active duty for any of the following types of duty:

''(A) Active duty for training under any provision of title 10, United States Code.

''(B) Training at encampments, maneuvers, outdoor target practice, or other exercises under chapter 5 of title 32, United States Code.

''(C) Full-time National Guard duty, as defined in section 101(d)(5) of title 10, United States Code.

''(f) GENERAL DEFINITIONS AND SPECIAL RULES.—For purposes of this section—

''(1) ELIGIBLE SMALL BUSINESS EMPLOYER.—

''(A) IN GENERAL.—The term 'eligible small business employer' means, with respect to any taxable year, any employer which—

''(i) employed an average of 100 or fewer employees on business days during such taxable year, and

''(ii) under a written plan of the employer, provides the excess amount described in subsection (b)(1)(A) to every qualified employee of the employer.

''(B) CONTROLLED GROUPS.—For purposes of subparagraph (A), all persons treated as a single employer under subsection (b), (c), (m), or (o) of section 414 shall be treated as a single employer.

''(2) MILITARY PAY AND ALLOWANCES.—The term 'military pay' means pay as that term is defined in section 101(21) of title 37, United States Code, and the term 'allowances' means the allowances payable to a member of the Armed Forces of the United States under chapter 7 of that title.

''(3) QUALIFIED RESERVE COMPONENT DUTY.—The term 'qualified reserve component duty' includes only active duty performed, as designated in the reservist's military orders, in support of a contingency operation as defined in section 101(a)(13) of title 10, United States Code.

''(4) CARRYBACK AND CARRYFORWARD ALLOWED.—

''(A) IN GENERAL.—If the credit allowable under subsection (a) for a taxable year exceeds the amount of the limitation under subsection (f)(1) for such taxable year (in this paragraph referred to as the 'unused credit year'), such excess shall be a credit carryback to the taxable year preceding the unused credit year and a credit carryforward to each of the 20 taxable years following the unused credit year.

''(B) RULES.—Rules similar to the rules of section 39 shall apply with respect to the credit carryback and credit carryforward under subparagraph (A).

''(5) CERTAIN RULES TO APPLY.—Rules similar to the rules of subsections (c), (d), and (e) of section 52 shall apply.''.

(b) NO DEDUCTION FOR COMPENSATION TAKEN INTO ACCOUNT FOR CREDIT.—Section 280C(a) of the Internal Revenue Code of 1986 (relating to rule for employment credits) is amended—

(1) by inserting ''or compensation'' after ''salaries'', and

(2) by inserting ''30C,'' before ''45A(a),''.

(c) CONFORMING AMENDMENT.—Section 55(c)(2) of the Internal Revenue Code of 1986 is amended by inserting ''30C(e)(1),'' after ''30(b)(3),''.

(d) CLERICAL AMENDMENT.—The table of sections for subpart B of part IV of subchapter A of chapter 1 of the Internal Revenue Code of 1986 is amended by adding at the end of 30A the following new item:

''Sec. 30C. Employer wage credit for activated military reservists.''.

(e) EFFECTIVE DATE.—The amendments made by this section shall apply to amounts paid in taxable years beginning after December 31, 2006.

SEC. 3. DIFFERENTIAL WAGE PAYMENTS.

(a) INCOME TAX WITHHOLDING ON DIFFERENTIAL WAGE PAYMENTS.—

(1) IN GENERAL.—Section 3401 of the Internal Revenue Code of 1986 (relating to definitions) is amended by adding at the end the following new subsection:

''(h) DIFFERENTIAL WAGE PAYMENTS TO ACTIVE DUTY MEMBERS OF THE UNIFORMED SERVICES.—

''(1) IN GENERAL.—For purposes of subsection (a), any differential wage payment shall be treated as a payment of wages by the employer to the employee.

''(2) DIFFERENTIAL WAGE PAYMENT.—For purposes of paragraph (1), the term 'differential wage payment' means any payment which—

''(A) is made by an employer to an individual with respect to any period during which the individual is performing service in the uniformed services while on active duty for a period of more than 30 days, and

''(B) represents all or a portion of the wages the individual would have received from the employer if the individual were performing service for the employer.''.

(2) EFFECTIVE DATE.—The amendment made by this subsection shall apply to remuneration paid after December 31, 2007.

(b) TREATMENT OF DIFFERENTIAL WAGE PAYMENTS FOR RETIREMENT PLAN PURPOSES.—

(1) PENSION PLANS.—

(A) IN GENERAL.—Section 414(u) of the Internal Revenue Code of 1986 (relating to special rules relating to veterans' reemployment rights under USERRA) is amended by adding at the end the following new paragraph:

''(11) TREATMENT OF DIFFERENTIAL WAGE PAYMENTS.—

''(A) IN GENERAL.—Except as provided in this paragraph, for purposes of applying this title to a retirement plan to which this subsection applies—

''(i) an individual receiving a differential wage payment shall be treated as an employee of the employer making the payment,

''(ii) the differential wage payment shall be treated as compensation, and

''(iii) the plan shall not be treated as failing to meet the requirements of any provision described in paragraph (1)(C) by reason of any contribution or benefit which is based on the differential wage payment.

''(B) SPECIAL RULE FOR DISTRIBUTIONS.—

''(i) IN GENERAL.—Notwithstanding subparagraph (A)(i), for purposes of section 401(k)(2)(B)(i)(I), 403(b)(7)(A)(ii), 403(b)(11)(A), or 457(d)(1)(A)(ii), an individual shall be treated as having been severed from employment during any period the individual is performing service in the uniformed services described in section 3401(h)(2)(A).

''(ii) LIMITATION.—If an individual elects to receive a distribution by reason of clause (i), the plan shall provide that the individual may not make an elective deferral or employee contribution during the 6-month period beginning on the date of the distribution.

''(C) NONDISCRIMINATION REQUIREMENT.—Subparagraph (A)(iii) shall apply only if all employees of an employer (as determined under subsections (b), (c), (m), and (o)) performing service in the uniformed services described in section 3401(h)(2)(A) are entitled to receive differential wage payments on reasonably equivalent terms and, if eligible to participate in a retirement plan maintained by the employer, to make contributions based on the payments on reasonably equivalent terms. For purposes of applying this subparagraph, the provisions of paragraphs (3), (4), and (5), of section 410(b) shall apply.

''(D) DIFFERENTIAL WAGE PAYMENT.—For purposes of this paragraph, the term 'differential wage payment' has the meaning given such term by section 3401(h)(2).''.

(B) CONFORMING AMENDMENT.—The heading for section 414(u) of such Code is amended by inserting ''AND TO DIFFERENTIAL WAGE PAYMENTS TO MEMBERS ON ACTIVE DUTY'' after ''USERRA''.

(2) DIFFERENTIAL WAGE PAYMENTS TREATED AS COMPENSATION FOR INDIVIDUAL RETIREMENT PLANS.—Section 219(f)(1) of the Internal Revenue Code of 1986 (defining compensation) is amended by adding at the end the following new sentence: ''The term 'compensation' includes any differential wage payment (as defined in section 3401(h)(2)).''.

(3) EFFECTIVE DATE.—The amendments made by this subsection shall apply to years beginning after December 31, 2007.

(c) PROVISIONS RELATING TO PLAN AMENDMENTS.—

(1) IN GENERAL.—If this subsection applies to any plan or annuity contract amendment—

(A) such plan or contract shall be treated as being operated in accordance with the terms of the plan or contract during the period described in paragraph (2)(B)(i), and

(B) except as provided by the Secretary of the Treasury, such plan shall not fail to meet the requirements of the Internal Revenue Code of 1986 or the Employee Retirement Income Security Act of 1974 by reason of such amendment.

(2) AMENDMENTS TO WHICH SECTION APPLIES.—

(A) IN GENERAL.—This subsection shall apply to any amendment to any plan or annuity contract which is made—

(i) pursuant to any amendment made by this section, and

(ii) on or before the last day of the first plan year beginning on or after January 1, 2009.

(B) CONDITIONS.—This subsection shall not apply to any plan or annuity contract amendment unless—

(i) during the period beginning on the date the amendment described in subparagraph (A)(i) takes effect and ending on the date described in subparagraph (A)(ii) (or, if earlier, the date the plan or contract amendment is adopted), the plan or contract is operated as if such plan or contract amendment were in effect, and

(ii) such plan or contract amendment applies retroactively for such period.

SEC. 4. CONTRIBUTIONS OF MILITARY DEATH GRATUITIES TO CERTAIN TAX-FAVORED ACCOUNTS.

(a) ROTH IRAS.—

(1) PROVISION IN EFFECT BEFORE PENSION PROTECTION ACT.—Subsection (e) of section 408A of the Internal Revenue Code of 1986 (relating to qualified rollover contribution), as in effect before the amendments made by section 824 of the Pension Protection Act of 2006, is amended to read as follows:

''(e) QUALIFIED ROLLOVER CONTRIBUTION.—For purposes of this section—

''(1) IN GENERAL.—The term 'qualified rollover contribution' means a rollover contribution to a Roth IRA from another such account, or from an individual retirement plan, but only if such rollover contribution meets the requirements of section 408(d)(3). Such term includes a rollover contribution described in section 402A(c)(3)(A). For purposes of section 408(d)(3)(B), there shall be disregarded any qualified rollover contribution from an individual retirement plan (other than a Roth IRA) to a Roth IRA.

''(2) MILITARY DEATH GRATUITY.—

''(A) IN GENERAL.—The term 'qualified rollover contribution' includes a contribution to a Roth IRA maintained for the benefit of an individual to the extent that such contribution does not exceed the amount received by such individual under section 1477 of title 10, United States Code, or under section 1967 of title 38 of such Code, if such contribution is made not later than 1 year after the day on which such individual receives such amount.

''(B) ANNUAL LIMIT ON NUMBER OF ROLLOVERS NOT TO APPLY.—Section 408(d)(3)(B) shall not apply with respect to amounts treated as a rollover by the subparagraph (A).

''(C) APPLICATION OF SECTION 72.—For purposes of applying section 72 in the case of a distribution which is not a qualified distribution, the amount treated as a rollover by reason of subparagraph (A) shall be treated as investment in the contract.''.

(2) PROVISION IN EFFECT AFTER PENSION PROTECTION ACT.—Subsection (e) of section 408A, as in effect after the amendments made by section 824 of the Pension Protection Act of 2006, is amended to read as follows:

''(e) QUALIFIED ROLLOVER CONTRIBUTION.—For purposes of this section—

''(1) IN GENERAL.—The term 'qualified rollover contribution' means a rollover contribution—

''(A) to a Roth IRA from another such account,

''(B) from an eligible retirement plan, but only if—

''(i) in the case of an individual retirement plan, such rollover contribution meets the requirements of section 408(d)(3), and

''(ii) in the case of any eligible retirement plan (as defined in section 402(c)(8)(B) other than clauses (i) and (ii) thereof), such rollover contribution meets the requirements of section 402(c), 403(b)(8), or 457(e)(16), as applicable.

For purposes of section 408(d)(3)(B), there shall be disregarded any qualified rollover contribution from an individual retirement plan (other than a Roth IRA) to a Roth IRA.

''(2) MILITARY DEATH GRATUITY.—

''(A) IN GENERAL.—The term 'qualified rollover contribution' includes a contribution to a Roth IRA maintained for the benefit of an individual to the extent that such contribution does not exceed the amount received by such individual under section 1477 of title 10, United States Code, or under section 1967 of title 38 of such Code, if such contribution is made not later than 1 year after the day on which such individual receives such amount.

''(B) ANNUAL LIMIT ON NUMBER OF ROLLOVERS NOT TO APPLY.—Section 408(d)(3)(B) shall not apply with respect to amounts treated as a rollover by the subparagraph (A).

''(C) APPLICATION OF SECTION 72.—For purposes of applying section 72 in the case of a distribution which is not a qualified distribution, the amount treated as a rollover by reason of subparagraph (A) shall be treated as investment in the contract.''.

(b) HEALTH SAVINGS ACCOUNTS AND ARCHER MSAS.—Sections 220(f)(5) and 223(f)(5) of the Internal Revenue Code of 1986 are each amended by adding at the end the following flush sentence:

''For purposes of subparagraphs (A) and (B), rules similar to the rules of section 408A(e)(2) (relating to rollover treatment for contributions of military death gratuity) shall apply.''.

(c) EDUCATION SAVINGS ACCOUNTS.—Section 530(d)(5) of the Internal Revenue Code of 1986 is amended by adding at the end the following new sentence: ''For purposes of this paragraph, rules similar to the rules of section 408A(e)(2) (relating to rollover treatment for contributions of military death gratuity) shall apply.''.

(d) EFFECTIVE DATES.—

(1) IN GENERAL.—Except as provided by paragraphs (2) and (3), the amendments made by this section shall apply with respect to deaths from injuries occurring on or after the date of the enactment of this Act.

(2) APPLICATION OF AMENDMENTS TO DEATHS FROM INJURIES OCCURRING ON OR AFTER OCTOBER 7, 2001, AND BEFORE ENACTMENT.—The amendments made by this section shall apply to any contribution made pursuant to section 408A(e)(2), 220(f)(5), 223(f)(5), or 530(d)(5) of the Internal Revenue Code of 1986, as amended by this Act, with respect to amounts received under section 1477 of title 10, United States Code, or under section 1967 of title 38 of such Code, for deaths from injuries occurring on or after October 7, 2001, and before the date of the enactment of this Act if such contribution is made not later than 1 year after the date of the enactment of this Act.

(3) PENSION PROTECTION ACT CHANGES.—Section 408A(e)(1) of the Internal Revenue Code of 1986 (as in effect after the amendments made by subsection (a)(2)) shall apply to taxable years beginning after December 31, 2007.

SEC. 5. TEMPORARY INCREASE IN STANDARD DEDUCTION FOR ACTIVE DUTY MILITARY PERSONNEL.

(a) IN GENERAL.—Paragraph (3) of section 63(c) of the Internal Revenue Code of 1986 (defining additional standard deduction for the aged and blind) is amended to read as follows:

''(3) ADDITIONAL STANDARD DEDUCTION.—For the purposes of paragraph (1), the additional standard deduction is the sum of—

''(A) the sum of each additional amount to which the taxpayer is entitled under subsection (f), plus

''(B) in the case of a taxable year beginning in 2007 or 2008, an additional amount of $1,000 for an individual for such taxable year if the individual who at any time during such taxable year is performing service in the uniformed services while on active duty for a period of more than 30 days.''.

(b) CONFORMING AMENDMENTS.—

(1) Section 3402(m)(3) of the the Internal Revenue Code of 1986 is amended by striking ''for the aged and blind''.

(2) Section 6012(a)(1)(B) of such Code is amended by adding at the end the following new sentence: ''The preceding sentence shall be applied without regard to section 63(c)(3)(B) and each of the amounts specified in subparagraph (A) shall be increased by the portion of any additional standard deduction to which the individual is entitled by reason of section 63(c)(3)(B).''.

(c) EFFECTIVE DATE.—The amendments made by this section shall apply to taxable years beginning after December 31, 2006.

SEC. 6. PERMANENT EXTENSION OF ELECTION TO INCLUDE COMBAT PAY AS EARNED INCOME FOR PURPOSES OF EARNED INCOME CREDIT.

(a) IN GENERAL.—Section 32(c)(2)(B)(vi) of the Internal Revenue Code of 1986, as amended by section 106 of division A of the Tax Relief and Health Care Act of 2006, is amended to read as follows:

''(vi) a taxpayer may elect to treat amounts excluded from gross income by means of section 112 as earned income.''.

(b) EFFECTIVE DATE.—The amendments made by this section shall apply to taxable years beginning after December 31, 2007.

By Mrs. FEINSTEIN (for herself, Mr. HATCH, Mr. SCHUMER, Mr. SPECTER, Mr. BIDEN, Mr. KYL, Mr. STEVENS, Ms. CANTWELL, Mr. COLEMAN, Ms. MIKULSKI, Mr. BAUCUS, Mr. PRYOR, Mr. SALAZAR, Mrs. MURRAY, Mr. BROWN, Mrs. CLINTON, Mrs. DOLE, Mr. CORNYN, Mr. KOHL, and Mr. CASEY):

S. 456. A bill to increase and enhance law enforcement resources committed to investigation and prosecution of violent gangs, to deter and punish violent gang crime, to protect law-abiding citizens and communities from violent criminals, to revise and enhance criminal penalties for violent crimes, to expand and improve gang prevention programs, and for other purposes; to the Committee on the Judiciary.

Mrs. FEINSTEIN. Mr. President, I am pleased to join Senator HATCH and a bipartisan group of at least 15 original cosponsors in introducing comprehensive antiaging legislation—the Gang Abatement and Prevention Act of 2007.

This bill will provide a comprehensive approach to gang violence by: helping those on the front lines of enforcement, by adopting new criminal laws and tougher penalties against those who commit gang-related and other violent acts; authorizing hundreds of millions of dollars for gang-related investigations and prosecutions, and new funds for witness protection; and identifying successful community programs, and investing significant resources in schools and civic and religious organizations to prevent teenagers and other young people from joining gangs in the first place.

On January 10 of this year, officials in Van Nuys, CA, reported that two teenage boys were shot in a reported gang-related shooting.

A few weeks earlier, on December 29, Visalia, CA, law enforcement officials reported two separate shootings and the wounding of two minors.

On December 24, San Diego officials noted how a 16 year old was shot in the leg in gang violence.

On December 22, a 9-year-old girl in Los Angeles was just washing dishes with her mom inside her home—until gang members exchanged fire across the street, and a bullet tore through the front wall of her house and struck her in the head.

And that came 5 days after Cheryl Green, a 14-year-old black girl who was talking to friends, was shot and killed by two Hispanic gang members.

The New York Times just reported on the Cheryl Green shooting, but unfortunately, I see gang violence in the news almost every day in California, with gang-related shootings of children almost too numerous to count. Perhaps the worst occurred last September, when Los Angeles experienced a new low.

Three-year-old Kaitlyn Avila was shot point-blank by a gang member who mistakenly thought her father was a member of a rival gang. The gang member shot and wounded her father, then intentionally fired into little Kaitlyn's chest.

It is the first time ever that law enforcement officials remember a young child being ''targeted'' in a gang-related shooting.

Unfortunately, this shooting is only a symptom of the disease that has taken hold of our cities—gang violence. The violence perpetrated by gang members affects not only those associated with gangs, but also police officers and innocent bystanders. It impacts not only individuals, but also our communities.

It stops mothers from allowing their children to play outside. It prevents

the elderly from taking walks in their neighborhoods. And it creates an environment of fear.

It is past time for the Federal Government to provide a hand of assistance to state and local law enforcement. And it is past time to come to grips with our country's escalating levels of gang violence.

Just last month the FBI released its Uniform Crime Report for the first half of 2006. The news was disturbing.

The report showed an alarming increase in homicides, assaults, robberies and other violent crimes across the U.S.—a surge of nearly 3.7 percent for the first 6 months of 2006.

This, of course follows on the heels of the FBI's 2005 figures, which had showed a 2.5 percent jump in violent crime.

At the time, those 2005 figures had represented the largest increase in violent crime in the U.S. in 15 years. But this newly announced increase for the first half of 2006 is almost 50 percent higher.

Of course, a big part of this increase is due to gang violence. Just as we heard when the 2005 figures were released, criminologists point to the spread of violent street gangs as a major cause of the 2006 increase in violent crime as well.

The warnings we have received about the links between the increase in violent crime and gangs have been steady and consistent.

When the FBI announced its 2005 figures last June, the Washington Post reported how criminal justice experts specifically identified ''an influx of gangs into medium-sized cities'' as a big reason for this increase. According to the Los Angeles Times, Houston police attributed their 2005 increase to gang members who evacuated New Orleans after Katrina.

When the 2006 figures were announced, the Washington Post quoted criminologist James Alan Fox, who described how ''[w]e have many high-crime areas where gangs have made a comeback.'' The L.A. Times noted how ''[e]xperts said the crime upsurge reflected an increase in gang violence, particularly in midsized cities.'' Cities like Houston, which experienced a massive 28 percent increase in violent crime.

The headline for the Sacramento Bee, reporting on the FBI's 31 percent reported increase in violent crime for that county, said it all: ''Gangs blamed for increase, which is part of [a] national hike in mayhem in '06.''

Even among the cities that experienced a 2006 reduction in violent crime—such as Los Angeles, which moved into the ranks of the safest cities in the U.S.—Mayor Villairaigosa described gang violence as the ''glaring exception.'' Gang crime was up by 14 percent in Los Angeles—and up 40 percent in San Fernando Valley, and 57 percent of Los Angeles' 478 homicides for 2006 were attributed to gangs—up 50 percent from 2005. And 86 percent of those murder victims were African American or Latino.

There can no longer be serious debate that gang violence is a big part of this problem.

The problem of gang violence in America is daunting. According to the FBI, there are now at least 30,000 gangs nationwide, with 800,000 members.

In California, the State attorney general now estimates that there are 171,000 juveniles and adults committed to criminal street gangs and their way of life. That's greater than the population of 28 California counties.

From 1992 to 2003, there were more than 7,500 gang-related homicides reported in California.

In 2004, more than one-third of the 2,000 homicides in California—698—were gang-related.

And it is worse among teens and young adults. In that same year, nearly 50 percent of the murders of 18 to 29 year olds were gang related. And nearly 60 percent of the murders of teens under 18 were gang related.

The list of people murdered by gangs includes some of our finest law enforcement officers:

Oceanside Police Officer, Dan Bessant, gunned down from behind just last month, in an incident described as eerily similar to a similar killing in 2003, when Oceanside Police Officer, Tony Zepetella, was shot and killed by a known gang member.

Los Angeles Police Officer Ricardo Lizarraga, killed while responding to a domestic violence call, by a man who drew a gun and shot him twice in the back. The suspect was a known member of the Rollin20s Bloods.

Merced Police Officer Stephan Gray, a member of his department's gang violence unit. Gray was shot and killed when a suspect—a gang member he had encountered before—fired two bullets into his chest.

Los Angeles Sherriff's Deputy Jeffrey Ortiz: As a member of his department's anti-gang task force, Ortiz had been going door to door in a gang-plagued neighborhood of L.A. He had just knocked on a door and was checking IDs when he was shot in the head at point-blank range. The alleged gunman is a suspected gang member wanted on an outstanding warrant for attempted murder.

Burbank Police Officer Matthew Pavelka: Two gunmen whom he had stopped for driving without license plates got out and showered him with gunfire. They were allegedly affiliated with the Vineland Boys gang.

California Highway Patrol Officer Thomas Steiner, killed after walking out of the Pomona courthouse after testifying in a series of traffic cases, by a 16-year-old intent on ''killing a cop'' to prove himself to the Pomona 12th street gang.

San Francisco Police Officer Isaac Espinoza: The first San Francisco police officer slain on duty in more than a decade, killed when an apparent ''Westmob'' gang member fired 14 rounds from an AK–47 assault rifle.

Gang killings also impact children and families. Unfortunately, 3–year-old Kaitlyn Avila is not alone: There is also 11-year-old Mynisha Crenshaw of San Bernardino, CA, a little girl shot and killed in November 2005;

Seven-week-old infant Glenn ''Baby G'' Molex, shot and killed on September 28, 2003, by one of the ''Down Below'' Gang after 28 bullets penetrated his family's apartment in San Francisco's Bayview District;

Joseph Swift, a 13-year-old boy shot outside a home after attending church in Los Angeles in 2003; and

Eight-year-old Sunny Elijah Peralez, shot in East Los Angeles by the Ghetto Boyz in 1999.

And this problem extends far beyond California—as evidenced by 8-year-old Kyron Butler, killed by a stray bullet during a Jersey Park Boys gang shootout in Smithfield, VA, in 2003, and 9-year-old Genesis Gonzalez, a little girl shot by a car of Crips gang members in Nevada in 2002.

As gangs have continued to spread across our country, increasing in violence and power in every State, they are no longer just a big city problem. They have metastasized from Los Angeles and Chicago to the medium and smaller cities where they face less competition.

The FBI now estimates that gangs are having an impact on at least 2,500 communities across the nation.

In the latest FBI statistics, violent crime and murder grew fastest in the midsized and smaller cities—not in our largest urban areas. The average midsized city, in fact, had a surge in overall violent crime of more than 5 percent in a single year.

It is clear that gangs engage in drug trafficking, robbery, extortion, prostitution, gun trafficking, and murder. They destroy neighborhoods, cripple families and kill innocent people.

Los Angeles Police Department Chief Bill Bratton put it bluntly:

> There is nothing more insidious than these gangs. They are worse than the Mafia. Show me a year in New York where the Mafia indiscriminately killed 300 people. You can't.

Our national gang problem is immense and growing, and it is not going away. Our cities and States need help. The many law enforcement officers that have spoken to me and others in my office say one thing clearly—short-term infusions are great, but what they really need is a long-term Federal commitment to combat gang violence.

A massive report just prepared for the City of Los Angeles even suggested that what is needed is a ''Marshal Plan'' initiative to combat gang violence.

Senator HATCH and I have been introducing comprehensive Federal gang legislation for over a decade. Our gang bills have been modified and refined over the years, most recently in legislation that we negotiated with the House for possible inclusion in the DOD Authorization bill last year.

The bill that we introduce today essentially takes that bill, but removes

all of its new death penalties. It has no mandatory minimums, and we have eliminated juvenile justice changes that previously proved to be an impediment to the larger bill's passage.

The bill that we offer today will provide a comprehensive solution to gang violence, combining enforcement and prevention efforts in a collaborative approach that has proven effective in models like Operation Ceasefire, and in Modesto, CA.

This bill would establish new Federal gang crimes and tougher Federal penalties.

Today's Federal street gang laws are frankly weak, and are almost never used. Currently, a person committing a gang crime might have extra time tacked on to the end of their Federal sentence. That is because Federal law currently focuses on gang violence only as a sentencing enhancement, rather than a crime unto itself.

The bill that I offer today would make it a separate Federal crime for any criminal street gang member to commit, conspire or attempt to commit violent crimes—including murder, kidnapping, arson, extortion—in furtherance of the gang.

And the penalties for gang members committing such crimes would increase considerably.

For gang-related murder, kidnapping, aggravated sexual abuse or maiming, the penalties would range up to life imprisonment.

For any other serious violent felony, the penalty would range up to 30 years—which in the Federal system means without parole.

And for other crimes of violence—defined as the actual or intended use of physical force against the person of another—the penalty could bring up to 20 years in prison.

The bill would also create a new crime for recruiting juveniles and adults into a criminal street gang, with a penalty of up to 10 years, or if the recruiting involved a juvenile or recruiting from prison, up to 20 years;

Create new Federal crimes for committing violent crimes in connection with drug trafficking, and increase existing penalties for violent crimes in aid of racketeering;

Enact a host of other violent crime reforms, including closing a loophole that had allowed carjackers to avoid convictions, increasing the penalties for those who use guns in violent crimes or transfer guns knowing they will be used in crimes, limiting bail for violent felons who possess firearms, and in a number of other respects cracking down harder on those who commit violent crimes; and

Make a long-term Federal commitment to fight gangs, by authorizing over $1 billion in new funds over the next 5 years for enforcement, prevention, and witness protection.

This would include $500 million for the development of High Intensity Interstate Gang Activity Areas, or HIIGAAs.

These HIIGAAs would mirror the successful HIDTA—High Intensity Drug Trafficking Area model—under which Federal, State and local agents coordinate investigations and prosecutions. And this $500 million would also be split 50/50, so that for every dollar spent on law enforcement, a dollar would be spent on prevention and intervention.

This balanced approach—of prevention and intervention plus tough penalties—will send a clear message to gang members: a new day has arrived. This bill will provide them with new opportunities, with schools and social services agencies empowered to make alternatives to gangs a realistic option. But if gang members continue to engage in violence, they will face new and serious Federal consequences.

I am pleased to report that this bill has already been endorsed by the National Sheriff's Association, the International Association of Chiefs of Police, and the National Association of Police Officers.

For more than 10 years now, Senator HATCH and I have been trying to pass Federal anti-gang legislation. There have been times when we have gotten close. Unfortunately, while Congress has failed to act, violent street gangs have only expanded nationwide and become more empowered and entrenched in other States and communities.

I believe this bill can pass the Senate and be enacted into law, especially after these changes that we have made and our previous negotiations conducted with members of the House and Senate.

The time has arrived for us to finally address this problem, and this bill is well-suited to help solve it. I urge my colleagues to support this legislation.

By Ms. SNOWE (for herself and Mr. ROCKEFELLER):

S. 460. A bill to make determinations by the United States Trade Representative under title III of the Trade Act of 1974 reviewable by the Court of International Trade and to ensure that the United States Trade Representative considers petitions to enforce United States Trade rights, and for other purposes; to the Committee on Finance.

Ms. SNOWE. Mr. President, when reflecting on the attributes that have made our great country prosperous—its free market system, its hard-working and enterprising people, its treasured natural resources—we must not overlook the rule of law as an equal, if not paramount element of the blessings we have secured. Since our Nation's founding, Americans have recognized that the success of worthy enterprises in a functioning market require the government—rather than choosing winners and losers—to consistently and dispassionately enforce the rules that bind all actors.

While our legal system evolved over the course of centuries to provide for the rule of law throughout our country, the fates of American people and businesses have become increasingly bound to counterparts in the world beyond our borders. Whether called ''Globalization'', ''Internationalization'' or some other moniker, the rapidly growing number of connections between suppliers, consumers and financiers across national boundaries means that agreements breached and laws broken on the far side of the world can harm companies and workers here at home.

Yet our government has failed to adapt to this new reality. While foreign governments engage in market-distorting currency manipulation, refuse to protect intellectual property rights and turn a blind eye to labor exploitation—each a violation of trade obligations to the United States—ours demurs with communiques and consultations, rather than formal enforcement action. What makes this abdication of its duty to defend the U.S. economy from unfair foreign practices especially troubling is that the tools to do so already exist in the dispute resolution provisions of various trade agreements.

The distressing reality is that U.S. industry and labor groups are often rebuffed in attempts to petition the United States Trade Representative to initiate a formal investigation or bring a dispute resolution action under the relevant multilateral or bilateral trade agreement, as there seems to be considerable institutional momentum among senior officials at USTR and elsewhere in the Administration against bringing formal enforcement action against certain trade partners, and China in particular.

USTR's handling of the trade effects of China's currency manipulation practices is representative of the problem. In September 2004, a U.S. industry coalition filed a petition under Section 301 of the Trade Act of 1974—the statute setting forth general procedures for the enforcement of U.S. trade rights—alleging that Chinese currency manipulation practices constituted a violation of China's obligations to the United States under World Trade Organization rules, and calling for USTR to conduct an investigation of such practices. USTR rejected the petition on the day it was filed, contending that ''an investigation would not be effective in addressing the acts, policies, and practices covered in the petition. The Administration is currently involved in efforts to address with the Government of China the currency valuation issues raised in the petition. The USTR believes that initiation of an investigation under [the Section 301 process] would hamper, rather than advance, Administration efforts to address Chinese currency valuation policies.'' Shortly thereafter, in November of 2004, a Congressional coalition of 12 Senators and 23 Representatives filed a similar Section 301 petition, which was rejected by USTR on the same grounds.

As noted in USTR's rejection of these petitions, current law allows the Executive to decline to initiate an industry-

requested investigation where it determines that action under Section 301 would be ineffective in addressing the offending act, policy or practice. The merits of USTR's determination are unreviewable under current law. USTR used this loophole to avoid having to even investigate industry's claim, let alone take formal action against China. And as we now know, the Administration's ''soft'' approach to Chinese currency manipulation has itself proven ineffective in addressing the problem in the two years since these filings.

It is to prevent further disregard for U.S. businesses and workers seeking a fair and consequential hearing of their concerns with foreign trade practices that Senator ROCKEFELLER and I today introduce the Trade Complaint and Litigation Accountability Improvement Measures Act, or the ''Trade CLAIM Act''.

The Trade CLAIM Act would amend the Section 301 process to require the United States Trade Representative to act upon an interested party's petition to take formal action in cases where a U.S. trade right has been violated, except in instances where: the matter has already been addressed by the relevant trade dispute settlement body; the foreign country is taking imminent steps to end to ameliorate the effects of the practice; taking action would do more harm than good to the U.S. economy; or taking action would cause serious harm to the national security of the United States.

The bill would also grant the Court of International Trade jurisdiction to review de novo USTR's denials of Section 301 industry petitions to investigate and take enforcement action against unfair foreign trade laws or practices. Such jurisdiction would include the ability to review USTR determinations that U.S. trade rights have not been violated as alleged in industry petitions, and the sufficiency of formal actions taken by USTR in response to foreign trade laws or practices determined to violate U.S. trade rights.

The Trade CLAIM Act would give U.S. businesses and workers a greater say in whether, when and how U.S. trade rights should be enforced. The bill would be particularly beneficial to small businesses, which—like other petitioners in Section 301 cases—currently have no avenue to formally challenge the merits of USTR's decisions, and are often drowned out by large business interests in industry-wide Section 301 actions initiated by USTR.

By providing for judicial review of USTR decisions not to enforce U.S. trade rights, the bill provides for impartial third party oversight by a specialty court not subject to political and diplomatic pressures. In delinking discreet trade disputes from the mercurial machinations of international relations, this Act would end the sacrifice of individual industries on the negotiating table, and leave it to the free market—uniformly operating under the trade rules to which our trading partners have already agreed—to decide their fate.

By Mr. GRASSLEY:

S. 461. A bill to amend title 28, United States Code, to provide an Inspector General for the judicial branch, and for other purposes; to the Committee on the Judiciary.

Mr. GRASSLEY. Mr. President, I ask unanimous consent that the text of this 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. 461

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 ''Judicial Transparency and Ethics Enhancement Act of 2007''.

SEC. 2. INSPECTOR GENERAL FOR THE JUDICIAL BRANCH.

(a) ESTABLISHMENT AND DUTIES.—Part III of title 28, United States Code, is amended by adding at the end the following:

''CHAPTER 60—INSPECTOR GENERAL FOR THE JUDICIAL BRANCH

''Sec.
''1021. Establishment.
''1022. Appointment, term, and removal of Inspector General.
''1023. Duties.
''1024. Powers.
''1025. Reports.
''1026. Whistleblower protection.

''§ 1021. Establishment

''There is established for the judicial branch of the Government the Office of Inspector General for the Judicial Branch (in this chapter referred to as the 'Office').

''§ 1022. Appointment, term, and removal of Inspector General

''(a) APPOINTMENT.—The head of the Office shall be the Inspector General, who shall be appointed by the Chief Justice of the United States after consultation with the majority and minority leaders of the Senate and the Speaker and minority leader of the House of Representatives.

''(b) TERM.—The Inspector General shall serve for a term of 4 years and may be reappointed by the Chief Justice of the United States for any number of additional terms.

''(c) REMOVAL.—The Inspector General may be removed from office by the Chief Justice of the United States. The Chief Justice shall communicate the reasons for any such removal to both Houses of Congress.

''§ 1023. Duties

''With respect to the judicial branch, the Office shall—

''(1) conduct investigations of alleged misconduct in the judicial branch (other than the United States Supreme Court) under chapter 16, that may require oversight or other action within the judicial branch or by Congress;

''(2) conduct investigations of alleged misconduct in the United States Supreme Court, that may require oversight or other action within the judicial branch or by Congress;

''(3) conduct and supervise audits and investigations;

''(4) prevent and detect waste, fraud, and abuse; and

''(5) recommend changes in laws or regulations governing the judicial branch.

''§ 1024. Powers

''(a) POWERS.—In carrying out the duties of the Office, the Inspector General shall have the power to—

''(1) make investigations and reports;

''(2) obtain information or assistance from any Federal, State, or local governmental agency, or other entity, or unit thereof, including all information kept in the course of business by the Judicial Conference of the United States, the judicial councils of circuits, the Administrative Office of the United States Courts, and the United States Sentencing Commission;

''(3) require, by subpoena or otherwise, the attendance and testimony of such witnesses, and the production of such books, records, correspondence memoranda, papers, and documents, which subpoena, in the case of contumacy or refusal to obey, shall be enforceable by civil action;

''(4) administer to or take from any person an oath, affirmation, or affidavit;

''(5) employ such officers and employees, subject to the provisions of title 5, governing appointments in the competitive service, and the provisions of chapter 51 and subchapter III of chapter 53 of such title relating to classification and General Schedule pay rates;

''(6) obtain services as authorized by section 3109 of title 5 at daily rates not to exceed the equivalent rate for a position at level IV of the Executive Schedule under section 5315; and

''(7) the extent and in such amounts as may be provided in advance by appropriations Acts, to enter into contracts and other arrangements for audits, studies, analyses, and other services with public agencies and with private persons, and to make such payments as may be necessary to carry out the duties of the Office.

''(b) CHAPTER 16 MATTERS.—The Inspector General shall not commence an investigation under section 1023(1) until the denial of a petition for review by the judicial council of the circuit under section 352(c) of this title or upon referral or certification to the Judicial Conference of the United States of any matter under section 354(b) of this title.

''(c) LIMITATION.—The Inspector General shall not have the authority to—

''(1) investigate or review any matter that is directly related to the merits of a decision or procedural ruling by any judge, justice, or court; or

''(2) punish or discipline any judge, justice, or court.

''§ 1025. Reports

''(a) WHEN TO BE MADE.—The Inspector General shall—

''(1) make an annual report to the Chief Justice and to Congress relating to the activities of the Office; and

''(2) make prompt reports to the Chief Justice and to Congress on matters that may require action by the Chief Justice or Congress.

''(b) SENSITIVE MATTER.—If a report contains sensitive matter, the Inspector General may so indicate and Congress may receive that report in closed session.

''(c) DUTY TO INFORM ATTORNEY GENERAL.—In carrying out the duties of the Office, the Inspector General shall report expeditiously to the Attorney General whenever the Inspector General has reasonable grounds to believe there has been a violation of Federal criminal law.

''§ 1026. Whistleblower protection

''(a) IN GENERAL.—No officer, employee, agent, contractor or subcontractor in the judicial branch may discharge, demote, threaten, suspend, harass or in any other manner discriminate against an employee in the terms and conditions of employment because

of any lawful act done by the employee to provide information, cause information to be provided, or otherwise assist in an investigation regarding any possible violation of Federal law or regulation, or misconduct, by a judge, justice, or any other employee in the judicial branch, which may assist the Inspector General in the performance of duties under this chapter.

''(b) CIVIL ACTION.—An employee injured by a violation of subsection (a) may, in a civil action, obtain appropriate relief.''.

(b) TECHNICAL AND CONFORMING AMENDMENT.—The table of chapters for part III of title 28, United States Code, is amended by adding at the end the following:

''60. Inspector General for the judicial branch.''.

Mr. REID (for himself and Mr. ENSIGN):

S. 462. A bill to approve the settlement of the water rights claims of the Shoshone-Paiute Tribes of the Duck Valley Indian Reservation in Nevada, to require the Secretary of the Interior to carry out the settlement, and for other purposes; to the Committee on Indian Affairs.

Mr. REID. Mr. President, I rise today to introduce legislation to resolve a Nevada water rights matter that has lasted more than a decade.

This bill, the Shoshone-Paiute Tribes of Duck Valley Water Rights Settlement Act, would ratify an agreement reached last fall by the State of Nevada, the Tribes, many individual water users, and the United States. I am pleased that the parties came together, asserted their interests, made compromises, and reached an agreement. Each party had different—and frequently conflicting—water claims, water needs, and ideas on water use and conservation. I appreciate the parties' hard work and their commitment to end expensive litigation to reach an agreement that will permanently resolve the water rights matters along the East Fork of the Owyhee River. This bill, if enacted, will ratify the agreement reached by the parties.

The primary purpose of this bill is to approve, ratify and confirm the agreement that addresses the Tribes' water rights, the rights of upstream water users, and the implementation of a plan for the parties to exercise their water rights.

The Agreement quantifies the Tribes' surface water rights and groundwater claims in Nevada. The Tribes will establish a water code and administer the quantified rights on the Reservation accordingly.

The Agreement also states that the water rights of the upstream water users who live off the Reservation will be determined and administered by the State Engineer. Under the settlement, the parties have agreed to a limitation on the number of acres that can be irrigated by the upstream water users.

The settlement's implementation plan describes how the rights of the respective parties will be administered and disputes will be resolved. It describes that the surface water basin will be closed, and provides that a groundwater basin will be declared a basin in need of additional administration under state law. The agreement further addresses operation of the system particularly during times of shortage. Under this part of the plan, upstream water users gain a small amount of water storage in the Wild Horse Reservoir.

The second purpose of this bill is to settle the Tribes' long-standing claims against the United States for damages caused by the Bureau of Reclamation's Duck Valley Irrigation Project, related Bureau of Indian Affairs projects, and the mismanagement of tribal resources, particularly the destruction of the Tribe's salmon and steelhead trout fishing stock.

The Shoshone-Paiutes have a long history in Nevada and Idaho. The Tribes roamed the region well before the Duck Valley Reservation was established by Executive Order in 1877. The Reservation today encompasses approximately 290,000 acres of land held in trust by the federal government for the Shoshone-Paiute Tribes.

The Reservation draws water from three primary sources: 1. the East Fork of the Owyhee River that flows through the Reservation from south to north from the Nevada side; 2. Blue Creek, a tributary to the Owyhee that flows north to south through the Reservation until it meets the Owyhee on the Idaho side of the Reservation; and 3. Mary's Creek, located in the northeastern part of the Reservation, flowing northeasterly through the Reservation and into Idaho.

When the Bureau of Indian Affairs' Duck Valley Indian Irrigation Project was initiated in the 1930s, the project placed over 12,000 acres of land under irrigation. Like many Indian water projects, the Project was only partially completed and never fully funded, which accounted for the Projects' disrepair, resulted in reduced storage capacity, and an inability to reach the goal of maximizing the acres in production.

With the construction of the Bureau of Reclamation's Owyhee Irrigation Project Dam in the 1930s, the Tribes' salmon runs were destroyed.

The affects of these federal projects on the Tribes' resources and culture and the Federal Government's failure to protect tribal water rights require places the United States in the position of compensating the Tribes for their loss. The Tribes value the loss to their resources and culture at level much higher than what Senator Ensign and I propose. While the United States can never fully compensate the Tribes for their loss, I appreciate the Tribes' willingness to accept the settlement figure and put an end to this painful part of our sovereign-to-sovereign relationship.

The bill, if enacted, would authorize two settlement funds—a development fund and a maintenance fund.

The development fund, to be authorized at $45 million over 5 fiscal years, would fund tribal water development projects. After careful research and consultation with its members and advisors, the Tribes have identified many projects to increase their economic opportunities. The Tribes are preparing to rehabilitate the dilapidated Duck Valley Irrigation Project, increase the amount of irrigable lands in agricultural production, develop a Wildlife Habitat Project, and undertake other economic development projects to enhance the Reservation economy and contribute to the permanent homeland purpose of the Duck Valley Reservation.

The maintenance fund, authorized at $15 million over 5 fiscal years, would fund the refurbishment and maintenance of the Reservation's water infrastructure.

The Shoshone-Paiute Tribes of Duck Valley Water Rights Settlement Act is important legislation. It reflects the compromises of our constituents who worked hard to reach agreement on matters that affect their livelihoods and cultures. I believe this bill benefit the Tribes, the ranchers and upstream water users, and those residents in the northern Nevada and southern Idaho region.

I look forward to working with the chairman and ranking member of the Senate Committee on Indian Affairs to ensure timely review and passage of this bill.

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. 462

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 ''Shoshone-Paiute Tribes of Duck Valley Water Rights Settlement Act''.

SEC. 2. FINDINGS.

Congress finds that—

(1) it is the policy of the United States, in accordance with the trust responsibility of the United States to Indian tribes, to promote Indian self-determination and economic self-sufficiency and to settle Indian water rights claims without lengthy and costly litigation, if practicable;

(2) quantifying rights to water and development of facilities needed to use tribal water supplies is essential to the development of viable Indian reservation economies and the establishment of a permanent reservation homeland;

(3) uncertainty concerning the extent of the right to water of the Shoshone-Paiute Tribes has limited the access of the Tribes to water and financial resources necessary to achieve self-determination and self-sufficiency;

(4) in 2006, the Tribes, the State of Idaho, the affected individual water users, and the United States resolved all tribal claims to water rights in the Snake River Basin Adjudication through a consent decree entered by the District Court of the Fifth Judicial District of the State of Idaho, requiring no further Federal action to implement the Tribes' water rights in the State of Idaho;

(5) as of the date of enactment of this Act, proceedings to determine the extent and nature of the water rights of the Tribes are pending before the Nevada State Engineer;

(6) final resolution through litigation of the water claims of the Tribes will—

(A) take many years;

(B) entail great expense;

(C) continue to limit the access of the Tribes to water, with economic and social consequences;

(D) prolong uncertainty relating to the availability of water supplies; and

(E) seriously impair long-term economic planning and development for all parties to the litigation;

(7) after many years of negotiation, the United States, the Tribes, the State, and the upstream water users have entered into a settlement agreement to resolve permanently all water rights of the Tribes in the State; and

(8) the Tribes have certain water-related claims for damages against the United States.

SEC. 3. PURPOSES.

The purposes of this Act are—

(1) to resolve outstanding issues with respect to the East Fork of the Owyhee River in the State in such a manner as to provide important benefits to—

(A) the United States;

(B) the State;

(C) the Tribes; and

(D) the upstream water users;

(2) to achieve a fair, equitable, and final settlement of all claims of the Tribes, members of the Tribes, and the United States on behalf of the Tribes to the East Fork of the Owyhee River in the State;

(3) to ratify and provide for the enforcement of the Agreement among the parties to the litigation;

(4) to resolve the Tribes' water-related claims for damages against the United States;

(5) to require the Secretary to perform all obligations of the Secretary under the Agreement and this Act; and

(6) to authorize the actions and appropriations necessary for the United States to meet the obligations of the United States under the Agreement and this Act.

SEC. 4. DEFINITIONS.

In this Act:

(1) AGREEMENT.—The term ''Agreement'' means the agreement entitled the ''Agreement to Establish the Relative Water Rights of the Shoshone-Paiute Tribes of the Duck Valley Indian Reservation and the Upstream Water Users, East Fork Owyhee River'' (including all attachments to that agreement).

(2) DEVELOPMENT FUND.—The term ''Development Fund'' means the Shoshone-Paiute Tribes Water Rights Development Fund established by section 7(b)(1).

(3) EAST FORK OF THE OWYHEE RIVER.—The term ''East Fork of the Owyhee River'' means the portion of the east fork of the Owyhee River that is located in the State.

(4) MAINTENANCE FUND.—The term ''Maintenance Fund'' means the Shoshone-Paiute Tribes Operation and Maintenance Fund established by section 7(c)(1).

(5) SECRETARY.—The term ''Secretary'' means the Secretary of the Interior.

(6) STATE.—The term ''State'' means the State of Nevada.

(7) TRIBAL WATER RIGHT.—The term ''tribal water right'' means a right of the Tribes described in the Agreement relating to water, including groundwater, storage water, and surface water.

(8) TRIBES.—The term ''Tribes'' means the Shoshone-Paiute Tribes of the Duck Valley Indian Reservation.

(9) UPSTREAM WATER USER.—The term ''upstream water user'' means an individual water user that—

(A) is located upstream from the Duck Valley Indian Reservation on the East Fork of the Owyhee River; and

(B) is a signatory to the Agreement.

SEC. 5. APPROVAL, RATIFICATION, AND CONFIRMATION OF AGREEMENT.

(a) IN GENERAL.—Except as provided in section 1f of article III of the Agreement, and except to the extent that the Agreement otherwise conflicts with this Act, the Agreement is approved, ratified, and confirmed.

(b) PERFORMANCE OF OBLIGATIONS.—The Secretary and any other head of a Federal agency obligated under the Agreement shall perform any action necessary to carry out an obligation under the Agreement in accordance with this Act.

SEC. 6. TRIBAL WATER RIGHTS.

(a) IN GENERAL.—The Secretary shall hold the tribal water rights in trust on behalf of the United States for the benefit of the Tribes.

(b) ADMINISTRATION.—

(1) ENACTMENT OF WATER CODE.—Not later than 3 years after the date of enactment of this Act, the Tribes shall enact a water code to administer tribal water rights.

(2) INTERIM ADMINISTRATION.—The Secretary shall regulate the tribal water rights during the period beginning on the date of enactment of this Act and ending on the date on which the Tribes enact a water code under paragraph (1).

(c) LOSS OF TRIBAL WATER RIGHTS.—The tribal water rights shall not be subject to loss by abandonment, forfeiture, or nonuse.

SEC. 7. DEVELOPMENT AND MAINTENANCE FUNDS.

(a) DEFINITION OF FUNDS.—In this section, the term ''Funds'' means—

(1) the Development Fund; and

(2) the Maintenance Fund.

(b) DEVELOPMENT FUND.—

(1) ESTABLISHMENT.—There is established in the Treasury of the United States a fund to be known as the ''Shoshone-Paiute Tribes Water Rights Development Fund''.

(2) USE OF FUNDS.—The Tribes shall use amounts in the Development Fund—

(A) to pay or reimburse costs incurred by the Tribes in acquiring land and water rights;

(B) for purposes of cultural preservation;

(C) to restore or improve fish or wildlife habitat;

(D) for fish or wildlife production, water resource development, agricultural development, rehabilitation, and expansion of the Duck Valley Irrigation Project;

(E) for water resource planning and development; or

(F) to pay the costs of designing and constructing water supply and sewer systems for tribal communities, including—

(i) a water quality testing laboratory;

(ii) other appropriate water-related projects and other related economic development projects;

(iii) the development of a water code; and

(iv) other costs of implementing the Agreement.

(3) AUTHORIZATION OF APPROPRIATIONS.—There is authorized to be appropriated to the Secretary for deposit in the Development Fund $9,000,000 for each of fiscal years 2008 through 2012.

(c) MAINTENANCE FUND.—

(1) ESTABLISHMENT.—There is established in the Treasury of the United States a fund to be known as the ''Shoshone-Paiute Tribes Operation and Maintenance Fund''.

(2) USE OF FUNDS.—The Tribes shall use amounts in the Maintenance Fund to pay or provide reimbursement for the costs of—

(A) operation and maintenance of the Duck Valley Irrigation Project and other water-related projects funded under this Act; or

(B) water supply and sewer systems for tribal communities, including the operation and maintenance costs of a water quality testing laboratory.

(3) AUTHORIZATION OF APPROPRIATIONS.—There is authorized to be appropriated to the Secretary for deposit in the Maintenance Fund $3,000,000 for each of fiscal years 2008 through 2012.

(d) ADMINISTRATION OF FUNDS.—

(1) IN GENERAL.—The Secretary, in accordance with the American Indian Trust Fund Management Reform Act of 1994 (25 U.S.C. 4001 et seq.), this Act, and the Agreement, shall manage the Funds, including by investing amounts from the Funds in accordance with—

(A) the Act of April 1, 1880 (25 U.S.C. 161); and

(B) the first section of the Act of June 24, 1938 (25 U.S.C. 162a).

(2) DISTRIBUTIONS.—

(A) WITHDRAWALS.—

(i) IN GENERAL.—During any fiscal year, the Tribes may withdraw amounts from the Funds if the Secretary approves a plan of the Tribes to withdraw amounts under section 202 of the American Indian Trust Fund Management Reform Act of 1994 (25 U.S.C. 4022).

(ii) PLAN TO WITHDRAW AMOUNTS.—

(I) INCLUSION.—In addition to any information required under section 202 of the American Indian Trust Fund Management Reform Act of 1994 (25 U.S.C. 4022), a plan of the Tribes to withdraw amounts under this subparagraph shall include a requirement that the Tribes spend the amounts withdrawn from the Funds during a fiscal year for 1 or more uses described in subsection (b)(2) or (c)(2).

(II) ENFORCEMENT.—The Secretary may take administrative or judicial action to enforce a plan of the Tribes to withdraw amounts.

(B) REMAINING AMOUNTS.—

(i) IN GENERAL.—On approval of an expenditure plan submitted by the Tribes under clause (ii), the Secretary shall distribute to the Tribes amounts in the Funds not withdrawn by the Tribes during the preceding fiscal year.

(ii) EXPENDITURE PLAN.—

(I) IN GENERAL.—For each fiscal year, the Tribes shall submit to the Secretary for approval an expenditure plan for amounts described in clause (i).

(II) INCLUSIONS.—An expenditure plan under subclause (I) shall include—

(aa) an accounting by the Tribes of any funds withdrawn by the Tribes from the Funds during the preceding fiscal year, including a description of any use by the Tribes of the funds and the amount remaining in the Funds for the preceding fiscal year; and

(bb) a description of the means by which the Tribes will use any amount distributed under this subparagraph.

(iii) APPROVAL.—The Secretary shall approve an expenditure plan under this subparagraph if the Secretary determines that the plan is—

(I) reasonable; and

(II) consistent with this Act and the Agreement.

(C) LIMITATIONS.—

(i) TIMING.—No amount from the Funds (including any interest income accruing to the Funds) shall be distributed until the waivers under section 8(a) take effect.

(ii) NO PER CAPITA DISTRIBUTIONS.—No amount from the Funds (including any interest income accruing to the Funds) shall be distributed to a member of the Tribes on a per capita basis.

(3) FUNDING AGREEMENT.—Notwithstanding any other provision of this Act, on receipt of a request from the Tribes, the Secretary shall include an amount appropriated under this subsection in the funding agreement of the Tribes under title IV of the Indian Self-Determination and Education Assistance Act (25 U.S.C. 458aa et seq.), for use in accordance with subsections (b)(2) and (c)(2).

(4) LIABILITY.—The Secretary and the Secretary of the Treasury shall not retain any liability for the expenditure or investment of amounts distributed to the Tribes under this subsection.

(5) CAPITAL COSTS NONREIMBURSABLE.—The capital costs associated with the Duck Valley Indian Irrigation Project as of the date of enactment of this Act, including any capital cost incurred with funds distributed under this subsection for that project, shall be permanently nonreimbursable.

SEC. 8. TRIBAL WAIVER OF CLAIMS.

(a) WAIVERS.—

(1) IN GENERAL.—Except as otherwise provided in the Agreement and this Act, the Tribes, and the United States on behalf of the Tribes, waive and release—

(A) all claims to water in the East Fork of the Owyhee River and all claims to injury relating to that water; and

(B) all claims against the State, any agency or political subdivision of the State, or any person, entity, or corporation relating to injury to a right of the Tribe under any Executive order entered on behalf of the Tribes, to the extent that the injury—

(i) resulted from a flow modification or a reduction in the quantity of water available; and

(ii) accrued on or before the effective date of the Agreement.

(2) ENFORCEMENT OF WAIVERS.—A waiver of a claim under this subsection by the Tribes, or the United States on behalf of the Tribes, shall be enforceable in the appropriate forum.

(3) EFFECTIVE DATE.—A waiver by the Tribes, or the United States on behalf of the Tribes, of a claim under this subsection shall take effect on the date on which the Secretary publishes in the Federal Register a statement of findings that includes a finding that—

(A) all parties to the Agreement have executed the Agreement;

(B) a decree acceptable to each party to the Agreement has been entered by the Fourth Judicial District Court, Elko County, Nevada; and

(C) the Agreement has been ratified under section 5(a).

(b) WAIVER AND RELEASE OF CLAIMS AGAINST THE UNITED STATES.—

(1) IN GENERAL.—In consideration of performance by the United States of all actions required by the Agreement and this Act, including the authorization of appropriations under subsections (b)(3) and (c)(3) of section 7, the Tribe shall execute a waiver and release of any claim against the United States for—

(A) a water right in the East Fork of the Owyhee River;

(B) an injury to a right described in subparagraph (A);

(C) breach of trust—

(i) for failure to protect, acquire, or develop a water right that accrued on or before the effective date of a waiver under this subsection; or

(ii) arising out of the negotiation or adoption of the Agreement; or

(D) a fishing right under any Executive order, to the extent that an injury to such a right—

(i) resulted from a reduction in the quantity of water available in the East Fork of the Owyhee River; and

(ii) accrued on or before the effective date of a waiver under this subsection.

(2) EFFECTIVE DATE.—

(A) IN GENERAL.—The waiver under paragraph (1) takes effect on the date on which the amounts authorized to be appropriated under subsections (b)(3) and (c)(3) of section 7 are distributed to the Tribes.

(B) TOLLING OF CLAIMS.—

(i) IN GENERAL.—Each applicable period of limitation and time-based equitable defense relating to a claim described in paragraph (1) shall be tolled for the period beginning on the date of enactment of this Act and ending on the date on which the amounts authorized to be appropriated under subsections (b)(3) and (c)(3) of section 7 are distributed to the Tribes.

(ii) EFFECT OF SUBPARAGRAPH.—Nothing in this subparagraph revives any claim or tolls any period of limitation or time-based equitable defense that expired before the date of enactment of this Act.

(c) RETENTION OF RIGHTS.—

(1) IN GENERAL.—The Tribes shall retain all rights not waived by the Tribes, or the United States on behalf of the Tribes, in the Agreement or this Act.

(2) CLAIMS OUTSIDE RESERVATION.—Nothing in the Agreement or this Act shall be considered to be a waiver by the Tribes of any claim to a right on land outside the Duck Valley Indian Reservation.

(3) FUTURE ACQUISITION OF WATER RIGHTS.—Nothing in the Agreement or this Act precludes the Tribes, or the United States as trustee for the Tribes, from acquiring a water right in the State to the same extent as any other entity in the State, in accordance with State law.

SEC. 9. MISCELLANEOUS.

(a) GENERAL DISCLAIMER.—The parties to the Agreement expressly reserve all rights not specifically granted, recognized, or relinquished by—

(1) the settlement described in the Agreement; or

(2) this Act.

(b) LIMITATION OF CLAIMS AND RIGHTS.—Nothing in this Act—

(1) establishes a standard for quantifying—

(A) a Federal reserved water right;

(B) an aboriginal claim; or

(C) any other water right claim of an Indian tribe in a judicial or administrative proceeding; or

(2) limits the right of a party to the Agreement to litigate any issue not resolved by the Agreement or this Act.

(c) ADMISSION AGAINST INTEREST.—Nothing in this Act shall be considered to be an admission against interest by a party in any legal proceeding.

(d) DUCK VALLEY RESERVATION.—The Duck Valley Indian Reservation established by the Executive order dated April 16, 1877, as adjusted pursuant to the Executive order dated May 4, 1886, and Executive order numbered 1222 and dated July 1, 1910, for use and occupation by the Western Shoshones and the Paddy Cap Band of Paiutes shall be—

(1) considered to be the property of the Tribes; and

(2) permanently held in trust by the United States for the sole use and benefit of the Tribes.

(e) JURISDICTION.—

(1) SUBJECT MATTER JURISDICTION.—Nothing in the Agreement or this Act restricts, enlarges, or otherwise determines the subject matter jurisdiction of any Federal, State, or tribal court.

(2) CIVIL OR REGULATORY JURISDICTION.—Nothing in the Agreement or this Act impairs or impedes the exercise of any civil or regulatory authority of the United States, the State, or the Tribes.

(3) CONSENT TO JURISDICTION.—The United States consents to jurisdiction in a proper forum for purposes of enforcing the provisions of the Agreement.

(4) EFFECT OF SUBSECTION.—Nothing in this subsection confers jurisdiction on any State court to—

(A) enforce Federal environmental laws relating to the duties of the United States under this Act; or

(B) conduct judicial review of a Federal agency action in accordance with this Act.

By Mr. McCAIN (for himself and Mr. FEINGOLD):

S. 463. A bill to amend the Federal Election Campaign Act of 1971 to clarify when organizations described in section 527 of the Internal Revenue Code of 1986 must register as political committees, and for other purposes; to the Committee on Rules and Administration.

Mr. McCAIN. Mr. President, once again I am pleased to be joined by my good friend and colleague Senator FEINGOLD from Wisconsin in introducing a bill to end the illegal practice of 527 groups spending soft money on ads and other activities to influence Federal elections.

This bill is very simple. It would require that all 527s register as political committees and comply with Federal campaign finance laws, including Federal limits on the contributions they receive, unless the money they raise and spend is only in connection with non-Federal candidate elections, State or local ballot initiatives, or the nomination or confirmation of individuals to non-elected offices.

Additionally, this legislation would set new rules for Federal political committees that spend funds on voter mobilization efforts effecting both Federal and local races and, therefore, use both a Federal and a non-Federal account under Federal Election Commission (FEC) regulation. The new rules would prevent unlimited soft money from being channeled into Federal election activities by these Federal political committees.

Under the new rules that would be established under this bill, at least half of the funds spent on these voter mobilization activities by Federal political committees would have to be hard money from their Federal account. More importantly, the funds raised for their non-Federal account would have to come from individuals and would be limited to no more than $25,000 per year per donor. Corporations and labor unions could not contribute to these non-Federal accounts. To put it in simple terms, a George Soros could give $25,000 per year as opposed to $10 million to finance these activities.

It is unfortunate that we even need to be here introducing this bill today. This legislation would not be necessary if the FEC would enforce existing law. As my colleagues know, a number of 527 groups raised and spent a substantial amount of soft money in a blatant effort to influence the outcome of the 2004 Presidential election. These activities are illegal under existing laws,

but, unfortunately, the FEC has failed to implement the regulations necessary to stop these illegal activities.

According to an analysis by campaign finance scholar Tony Corrado, federally oriented 527s spent $423 million to affect the outcome of the 2004 elections. The same analysis shows that ten donors gave at least $4 million each to 527s involved in the 2004 elections and two donors each contributed over $20 million. Let me be perfectly clear on one point here. Our proposal will NOT shut down 527s. It will simply require them to abide by the same Federal regulations every other Federal political committee must abide by in spending money to influence Federal elections.

Opponents of campaign finance reform like to point out that the activities of these 527s serve as proof that the Bipartisan Campaign Reform Act (BCRA) has failed in its stated purpose, which is to eliminate the corrupting influence of soft money in our political campaigns. Let me be perfectly clear on this. The 527 issue has nothing to do with BCRA, it has everything to do with the Federal Election Campaign Act of 1974 and the failure of the FEC to properly regulate the activities of these groups.

The bill Senator FEINGOLD and I are introducing today is designed to put an end to the abusive, illegal practices of these 527s. I urge my colleagues to support swift passage of this bill and put an end to this problem once and for all.

Mr. FEINGOLD. Mr. President, I am pleased to be working once again with my partner in reform, the senior Senator from Arizona, Senator MCCAIN, to introduce the 527 Reform Act.

Our purpose is simple—to pass legislation that will do what the FEC could and should do under current law, but, once again, has failed to do. Current Federal election law requires these groups to register as political committees and to stop raising and spending soft money. But the FEC has failed to enforce the law, so we must act in the Congress. This bill will make it absolutely clear that the federal election laws apply to 527 organizations.

We had to something similar with BCRA, the Bipartisan Campaign Reform Act, which passed in 2002, closing the soft money loophole that the FEC created in the late '70s and expanded in the '90s. That struggle took seven years. We have now been seeking to bring 527s within the law for four.

This bill will require all 527s to register as political committees unless they fall into a number of narrow categories. The exceptions are basically for groups that Congress exempted from disclosure requirements because they are so small or for groups that are involved exclusively in State election activity. Once a group registers as a political committee, certain activities, such as ads that mention only Federal candidates, will have to be paid for solely with hard money.

Under current rules, the FEC permits Federal political committees to maintain a non-Federal account to pay a portion of the expenses of activities that affect both Federal and non-Federal elections. Our bill sets new allocation rules that will make sure that these allocable activities are paid for with at least 50 percent hard money.

Finally, the bill makes an important change with respect to the non-federal portion of the allocable activities. We put a limit of $25,000 per year on the contributions that can be accepted for that non-federal account. This means no more million dollar soft money contributions to pay for get-out-the-vote efforts in the presidential campaign.

Nothing in this bill will affect legitimate 501(c) advocacy groups. The bill only applies to groups that claim a tax exemption under section 527.

Having laid out the central components of the bill, let me discuss how this bill has evolved, and the differences between this bill and the bill we introduced in 2005. In the last Congress, we made a great deal of progress working with the Senator from Mississippi, who at the time chaired the Rules Committee. Prior to taking the bill to a markup in the spring of 2005, Senator LOTT worked with us to clarify the bill and address some of the concerns that had been raised about it. The bill we are introducing today is identical to the ''Chairman's Mark'' that Senator LOTT brought before the Rules Committee last year.

While the original bill exempted 527s engaged exclusively in state elections from the registration requirement, it denied the exemption to groups that carry out ''voter drive activities''—defined as get-out-the vote, voter ID, or voter registration—during a federal election year. This made the exemption too narrow, so we looked for another way to ensure that state 527s that only work on behalf of non-Federal officeholders will not have to become Federal PACs.

The Chairman's Mark, and this year's bill, completely exempt organizations of State and local candidates or officeholders. Groups such as the Democratic Governors Association, Republican Governors Association, or a state legislative caucus would be exempt, as long as their voter drive activities only mention state candidates or ballot issues. These groups do not qualify for the exemption, however, if they mention Federal candidates in their communications.

Second, the bill provides a slightly narrower exemption for State PACs that are active only in State elections. The only additional requirements for these PACs to qualify for an exemption are that they can only be active in a single State, and they cannot have a candidate for Federal office or Federal officeholder controlling or participating in the organization or raising money for it.

Finally, we made a number of changes to ensure that Federal PACs that allocate expenditures can use non-Federal money for expenditures designed only to assist State candidates even if they make an incidental reference to a Federal candidate or political party.

The changes to the legislation that we made last year working with Senator LOTT prior to the Rules Committee markup have been carried forward in the bill we introduce today. They improved and strengthened the bill. Unfortunately, other amendments were added during the Rules Committee consideration of the bill that we could not support. So the bill that we are introducing today is the same as the bill that went to markup in 2005, not the bill that was reported.

In closing, let me remind my colleagues that the soft money loophole was first opened by FEC rulings in the late '70s. By the time we started work on BCRA, the problem had mushroomed and led to the scandals we saw in the 1996 campaign. When we passed BCRA, I said we would have to be vigilant to make sure that the FEC enforced the law and that similar loopholes did not develop. That is what we are trying to do here.

I have no doubt that if we don't act on this 527 problem now, we will see more problems explode into scandals over the next few election cycles. In the 2004 cycle, Federal-oriented 527s spend $423 million. In fact, there were two donors who each contributed over $20 million. We cannot afford to wait until another presidential campaign season is in full bloom before addressing this problem. This FEC-ordained loophole threatens to further undermine the federal election laws. We must close it this year.

By Mr. ROCKEFELLER (for himself, Ms. COLLINS, and Mr. NELSON of Florida):

S. 464. A bill to amend title XVIII and XIX of the Social Security Act to improve the requirements regarding advance directives in order to ensure that an individual's health care decisions are complied with, and for other purposes; to the Committee on Finance.

By Mr. NELSON of Florida (for himself, Mr. LUGAR, Mr. ROCKEFELLER, Ms. COLLINS Mr. DURBIN, and Mr. BINGAMAN):

S. 465. A bill to amend titles XVIII and XIX of the Social Security Act and title III of the Public Health Service Act to improve access to information about individuals' health care options and legal rights for care near the end of life, to promote advance care planning and decisionmaking so that individuals' wishes are known should they become unable to speak for themselves, to engage health care providers in disseminating information about and assisting in the preparation of advance directives, which include living wills and durable powers of attorney for health care, and for other purposes; to the Committee on Finance.

By Mr. ROCKEFELLER (for himself, Mr. NELSON of Florida, and Mr. LUGAR):

S. 466. A bill to amend title XVIII of the Social Security Act to provide for coverage of an end-of-life planning consultation as part of an initial preventive physical examination under the Medicare program; to the Committee on Finance.

Mr. ROCKEFELLER. Mr. President, death is by no means an easy subject to talk about; nonetheless, end-of-life care continues to be a controversial topic that must be addressed. Today, I am introducing three bills that I hope will go a long way to improve end-of-life care in this country. Senator SUSAN COLLINS and I are reintroducing our Advance Planning and Compassionate Care Act, comprehensive legislation that would ensure that patients' final wishes for end-of-life care are known, respected, and complied with. This legislation has been introduced in each Congress since the 105th Congress. I am hopeful that we will be able to move it this year.

I am also introducing the Medicare End-of-Life Care Planning Act with Senators LUGAR and BILL NELSON. This important bill is based on an amendment that I introduced during the Finance Committee's consideration of the Deficit Reduction Act in 2005. It would require physician consultation regarding advance directives during the initial ''Welcome to Medicare'' physician visit. An end-of-life care consultation during a Medicare recipient's first contact with the program would emphasize the importance of advance planning and give him or her the tools necessary to understand advance directives, the Medicare hospice benefit, and other end-of-life care concerns. Having such a benefit in Medicare would undoubtedly improve patient care and quality at the end-of-life.

The final bill that I would like to talk about today is the Advance Directives Improvement and Education Act, legislation that I am cosponsoring with Senators BILL NELSON and RICHARD LUGAR. The Advance Directives Improvement and Education Act complements both of the bills I am introducing today. It includes my language on the ''Welcome to Medicare'' doctor's visit, which I believe is critical, but it also includes two other important provisions. It improves the policies for use and portability of advance directives across state lines, and it directs the Secretary of HHS to conduct a public education campaign on the importance of end-of-life planning.

I am happy to be an author of each of these bills. As we have seen recently with the well-publicized case of Terri Shiavo, end-of-life decision making can be confusing and cause added anguish to an already sorrowful situation. The delicate nature of life and love make it very difficult to create strict rules governing end-of-life care, nor should we want to. In its present form, however, end-of-life planning and care for most Americans is perplexing, disjointed, and lacking an active dialogue. We can, and must, take action to make this process as easy as possible.

It is not surprising that we face this problem. Health care professionals frequently use terms that are too technical or confusing for the average person. Patients who appear too sick to participate in the discussions may be excluded from determining their own destiny. And all too often the entire conversation never happens due to the discomfort of all parties involved. As a result, patients and families, suffer needlessly during these already difficult times. A report issued by the Institute of Medicine Committee on Care at the End of Life stated that, and I quote, ''suffering arises when the aggressive use of ineffectual or intrusive interventions serves to prolong the period of dying unnecessarily or to dishonor the dying person's wishes about care. Too often, dying people and their families are either not aware of these care options, not fully apprised of the probable benefits and burdens of these various options, or are the recipients of care that is inconsistent with their wishes as expressed in written or oral directives.''

Despite these shortcomings, the evidence tells us that most people want to discuss advanced directives when they are healthy and they want their families involved in the process. According to the American Psychological Association, almost 60 percent of individuals 65 or older state that they want their family to be given choices about treatment should they become incapacitated rather than leaving the decision up to physicians. How can we allow these serious problems to persist when dealing with the lives of our family and friends?

Death is hard to think about. Death is hard to talk about. And the final period of time leading up to our death is hard to plan. But we must encourage our family, our friends, and our loved ones to discuss this difficult topic in an open and effective manner in order to avoid any additional pain when a loved one passes away. We must also provide them the best tools to do so.

The legislation I am introducing today accomplishes this objective by developing standards for end-of-life care, facilitating opportunities for patients to discuss end-of-life issues with a trained professional, and authorizing funds for demonstration projects on innovative approaches to end-of-life care.

Death is a serious, personal, and complicated issue that is eventually relevant to each and every one of us. Americans deserve end-of-life care that is effective in fulfilling individual wishes, avoiding unnecessary disputes, and, most importantly, providing quality end-of-life care. Therefore, I urge my colleagues to join us in improving end-of-life care and reducing the amount of grief that inevitably comes with losing those who we hold dear.

I ask unanimous consent that the text of each of these bills be printed in the RECORD.

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

S. 464

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

SECTION 1. SHORT TITLE; TABLE OF CONTENTS.

(a) SHORT TITLE.—This Act may be cited as the ''Advance Planning and Compassionate Care Act of 2007''.

(b) TABLE OF CONTENTS.—The table of contents of this Act is as follows:

Sec. 1. Short title; table of contents.
Sec. 2. Development of standards to assess end-of-life care.
Sec. 3. Study and report by the Secretary of Health and Human Services regarding the establishment and implementation of a national uniform policy on advance directives.
Sec. 4. Improvement of policies related to the use of advance directives.
Sec. 5. National information hotline for end-of-life decisionmaking and hospice care.
Sec. 6. Demonstration project for innovative and new approaches to end-of-life care for Medicare, Medicaid, and SCHIP beneficiaries.
Sec. 7. Establishment of End-of-Life Care Advisory Board.

SEC. 2. DEVELOPMENT OF STANDARDS TO ASSESS END-OF-LIFE CARE.

(a) IN GENERAL.—The Secretary of Health and Human Services, in consultation with the Administrator of the Centers for Medicare & Medicaid Services, the Director of the National Institutes of Health, the Administrator of the Agency for Health Care Policy and Research, and the End-of-Life Care Advisory Board (established under section 7), shall develop outcome standards and measures to—

(1) evaluate the performance of health care programs and projects that provide end-of-life care to individuals, including the quality of the care provided by such programs and projects; and

(2) assess the access to, and utilization of, such programs and projects, including differences in such access and utilization in rural and urban areas and for minority populations.

(b) REPORT TO CONGRESS.—Not later than 2 years after the date of enactment of this Act, the Secretary of Health and Human Services shall submit to Congress a report on the outcome standards and measures developed under subsection (a), together with recommendations for such legislation and administrative actions as the Secretary considers appropriate.

SEC. 3. STUDY AND REPORT BY THE SECRETARY OF HEALTH AND HUMAN SERVICES REGARDING THE ESTABLISHMENT AND IMPLEMENTATION OF A NATIONAL UNIFORM POLICY ON ADVANCE DIRECTIVES.

(a) STUDY.—

(1) IN GENERAL.—The Secretary of Health and Human Services shall conduct a thorough study of all matters relating to the establishment and implementation of a national uniform policy on advance directives for individuals receiving items and services under titles XVIII and XIX of the Social Security Act (42 U.S.C. 1395 et seq.; 1396 et seq.).

(2) MATTERS STUDIED.—The matters studied by the Secretary of Health and Human Services under paragraph (1) shall include issues concerning—

(A) family satisfaction that a patient's wishes, as stated in the patient's advance directive, were carried out;

(B) the portability of advance directives, including cases involving the transfer of an individual from 1 health care setting to another;

(C) immunity from civil liability and criminal responsibility for health care providers that follow the instructions in an individual's advance directive that was validly executed in, and consistent with the laws of, the State in which it was executed;

(D) conditions under which an advance directive is operative;

(E) revocation of an advance directive by an individual;

(F) the criteria used by States for determining that an individual has a terminal condition;

(G) surrogate decisionmaking regarding end-of-life care;

(H) the provision of adequate palliative care (as defined in paragraph (3)), including pain management; and

(I) adequate and timely referrals to hospice care programs.

(3) PALLIATIVE CARE.—For purposes of paragraph (2)(H), the term ''palliative care'' means interdisciplinary care for individuals with a life-threatening illness or injury relating to pain and symptom management and psychological, social, and spiritual needs and that seeks to improve the quality of life for the individual and the individual's family.

(b) REPORT TO CONGRESS.—Not later than 18 months after the date of enactment of this Act, the Secretary of Health and Human Services shall submit to Congress a report on the study conducted under subsection (a), together with recommendations for such legislation and administrative actions as the Secretary considers appropriate.

(c) CONSULTATION.—In conducting the study and developing the report under this section, the Secretary of Health and Human Services shall consult with the End-of-Life Care Advisory Board (established under section 7), the Uniform Law Commissioners, and other interested parties.

SEC. 4. IMPROVEMENT OF POLICIES RELATED TO THE USE OF ADVANCE DIRECTIVES.

(a) MEDICARE.—Section 1866(f) of the Social Security Act (42 U.S.C. 1395cc(f)) is amended—

(1) in paragraph (1)—

(A) in subparagraph (B), by inserting ''and if presented by the individual, to include the content of such advance directive in a prominent part of such record'' before the semicolon at the end;

(B) in subparagraph (D), by striking ''and'' after the semicolon at the end;

(C) in subparagraph (E), by striking the period at the end and inserting ''; and''; and

(D) by inserting after subparagraph (E) the following new subparagraph:

''(F) to provide each individual with the opportunity to discuss issues relating to the information provided to that individual pursuant to subparagraph (A) with an appropriately trained professional.'';

(2) in paragraph (3), by striking ''a written'' and inserting ''an''; and

(3) by adding at the end the following new paragraph:

''(5)(A) An advance directive validly executed outside of the State in which such advance directive is presented by an adult individual to a provider of services, a Medicare Advantage organization, or a prepaid or eligible organization shall be given the same effect by that provider or organization as an advance directive validly executed under the law of the State in which it is presented would be given effect.

''(B)(i) The definition of an advanced directive shall also include actual knowledge of instructions made while an individual was able to express the wishes of such individual with regard to health care.

''(ii) For purposes of clause (i), the term 'actual knowledge' means the possession of information of an individual's wishes communicated to the health care provider orally or in writing by the individual, the individual's medical power of attorney representative, the individual's health care surrogate, or other individuals resulting in the health care provider's personal cognizance of these wishes. Other forms of imputed knowledge are not actual knowledge.

''(C) The provisions of this paragraph shall preempt any State law to the extent such law is inconsistent with such provisions. The provisions of this paragraph shall not preempt any State law that provides for greater portability, more deference to a patient's wishes, or more latitude in determining a patient's wishes.''.

(b) MEDICAID.—Section 1902(w) of the Social Security Act (42 U.S.C. 1396a(w)) is amended—

(1) in paragraph (1)—

(A) in subparagraph (B)—

(i) by striking ''in the individual's medical record'' and inserting ''in a prominent part of the individual's current medical record''; and

(ii) by inserting ''and if presented by the individual, to include the content of such advance directive in a prominent part of such record'' before the semicolon at the end;

(B) in subparagraph (D), by striking ''and'' after the semicolon at the end;

(C) in subparagraph (E), by striking the period at the end and inserting ''; and''; and

(D) by inserting after subparagraph (E) the following new subparagraph:

''(F) to provide each individual with the opportunity to discuss issues relating to the information provided to that individual pursuant to subparagraph (A) with an appropriately trained professional.'';

(2) in paragraph (4), by striking ''a written'' and inserting ''an''; and

(3) by adding at the end the following paragraph:

''(6)(A) An advance directive validly executed outside of the State in which such advance directive is presented by an adult individual to a provider or organization shall be given the same effect by that provider or organization as an advance directive validly executed under the law of the State in which it is presented would be given effect.

''(B)(i) The definition of an advanced directive shall also include actual knowledge of instructions made while an individual was able to express the wishes of such individual with regard to health care.

''(ii) For purposes of clause (i), the term 'actual knowledge' means the possession of information of an individual's wishes communicated to the health care provider orally or in writing by the individual, the individual's medical power of attorney representative, the individual's health care surrogate, or other individuals resulting in the health care provider's personal cognizance of these wishes. Other forms of imputed knowledge are not actual knowledge.

''(C) The provisions of this paragraph shall preempt any State law to the extent such law is inconsistent with such provisions. The provisions of this paragraph shall not preempt any State law that provides for greater portability, more deference to a patient's wishes, or more latitude in determining a patient's wishes.''.

(c) STUDY AND REPORT REGARDING IMPLEMENTATION.—

(1) STUDY.—The Secretary of Health and Human Services shall conduct a study regarding the implementation of the amendments made by subsections (a) and (b).

(2) REPORT.—Not later than 18 months after the date of enactment of this Act, the Secretary of Health and Human Services shall submit to Congress a report on the study conducted under paragraph (1), together with recommendations for such legislation and administrative actions as the Secretary considers appropriate.

(d) EFFECTIVE DATES.—

(1) IN GENERAL.—Subject to paragraph (2), the amendments made by subsections (a) and (b) shall apply to provider agreements and contracts entered into, renewed, or extended under title XVIII of the Social Security Act (42 U.S.C. 1395 et seq.), and to State plans under title XIX of such Act (42 U.S.C. 1396 et seq.), on or after such date as the Secretary of Health and Human Services specifies, but in no case may such date be later than 1 year after the date of enactment of this Act.

(2) EXTENSION OF EFFECTIVE DATE FOR STATE LAW AMENDMENT.—In the case of a State plan under title XIX of the Social Security Act (42 U.S.C. 1396 et seq.) which the Secretary of Health and Human Services determines requires State legislation in order for the plan to meet the additional requirements imposed by the amendments made by subsection (b), the State plan shall not be regarded as failing to comply with the requirements of such title solely on the basis of its failure to meet these additional requirements before the first day of the first calendar quarter beginning after the close of the first regular session of the State legislature that begins after the date of enactment of this Act. For purposes of the previous sentence, in the case of a State that has a 2-year legislative session, each year of the session is considered to be a separate regular session of the State legislature.

SEC. 5. NATIONAL INFORMATION HOTLINE FOR END-OF-LIFE DECISIONMAKING AND HOSPICE CARE.

The Secretary of Health and Human Services, acting through the Administrator of the Centers for Medicare & Medicaid Services, shall operate directly, or by grant, contract, or interagency agreement, out of funds otherwise appropriated to the Secretary, a clearinghouse and a 24-hour toll-free telephone hotline in order to provide consumer information about advance directives (as defined in section 1866(f)(3) of the Social Security Act (42 U.S.C. 1395cc(f)(3)), as amended by section 4(a)), end-of-life decisionmaking, and available end-of-life and hospice care services. In carrying out the preceding sentence, the Administrator may designate an existing clearinghouse and 24-hour toll-free telephone hotline or, if no such entity is appropriate, may establish a new clearinghouse and a 24-hour toll-free telephone hotline.

SEC. 6. DEMONSTRATION PROJECT FOR INNOVATIVE AND NEW APPROACHES TO END-OF-LIFE CARE FOR MEDICARE, MEDICAID, AND SCHIP BENEFICIARIES.

(a) ESTABLISHMENT.—

(1) IN GENERAL.—The Secretary, acting through the Administrator of the Centers for Medicare & Medicaid Services, shall conduct a demonstration project under which the Secretary contracts with entities operating programs in order to develop new and innovative approaches to providing end-of-life care to Medicare beneficiaries, Medicaid beneficiaries, and SCHIP beneficiaries.

(2) APPLICATION.—Any entity seeking to participate in the demonstration project shall submit to the Secretary an application in such form and manner as the Secretary may require.

(3) DURATION.—The authority of the Secretary to conduct the demonstration project shall terminate at the end of the 5-year period beginning on the date the Secretary implements the demonstration project.

(b) SELECTION CRITERIA.—

(1) IN GENERAL.—Subject to paragraphs (2) and (3), in selecting entities to participate in the demonstration project, the Secretary shall select entities that will allow for programs to be conducted in a variety of States, in an array of care settings, and that reflect—

(A) a balance between urban and rural settings;

(B) cultural diversity; and

(C) various modes of medical care and insurance, such as fee-for-service, preferred provider organizations, health maintenance organizations, hospice care, home care services, long-term care, pediatric care, and integrated delivery systems.

(2) PREFERENCES.—The Secretary shall give preference to entities operating programs that—

(A) will serve Medicare beneficiaries, Medicaid beneficiaries, or SCHIP beneficiaries who are dying of illnesses that are most prevalent under the Medicare program, the Medicaid program, or SCHIP, respectively; and

(B) appear capable of sustained service and broad replication at a reasonable cost within commonly available organizational structures.

(3) SELECTION OF PROGRAM THAT PROVIDES PEDIATRIC END-OF-LIFE CARE.—The Secretary shall ensure that at least 1 of the entities selected to participate in the demonstration project operates a program that provides pediatric end-of-life care.

(c) EVALUATION OF PROGRAMS.—

(1) IN GENERAL.—Each program operated by an entity under the demonstration project shall be evaluated at such regular intervals as the Secretary determines are appropriate.

(2) USE OF PRIVATE ENTITIES TO CONDUCT EVALUATIONS.—The Secretary, in consultation with the End-of-Life Care Advisory Board (established under section 7), shall contract with 1 or more private entities to coordinate and conduct the evaluations under paragraph (1). Such a contract may not be awarded to an entity selected to participate in the demonstration project.

(3) REQUIREMENTS FOR EVALUATIONS.—

(A) USE OF OUTCOME MEASURES AND STANDARDS.—In coordinating and conducting an evaluation of a program conducted under the demonstration project, an entity shall use the outcome standards and measures required to be developed under section 2 as soon as those standards and measures are available.

(B) ELEMENTS OF EVALUATION.—In addition to the use of the outcome standards and measures under subparagraph (A), an evaluation of a program conducted under the demonstration project shall include the following:

(i) A comparison of the quality of care provided by, and of the outcomes for Medicare beneficiaries, Medicaid beneficiaries, and SCHIP beneficiaries, and the families of such beneficiaries enrolled in, the program being evaluated to the quality of care and outcomes for such individuals that would have resulted if care had been provided under existing delivery systems.

(ii) An analysis of how ongoing measures of quality and accountability for improvement and excellence could be incorporated into the program being evaluated.

(iii) A comparison of the costs of the care provided to Medicare beneficiaries, Medicaid beneficiaries, and SCHIP beneficiaries under the program being evaluated to the costs of such care that would have been incurred under the Medicare program, the Medicaid program, and SCHIP if such program had not been conducted.

(iv) An analysis of whether the program being evaluated implements practices or procedures that result in improved patient outcomes, resource utilization, or both.

(v) An analysis of—

(I) the population served by the program being evaluated; and

(II) how accurately that population reflects the total number of Medicare beneficiaries, Medicaid beneficiaries, and SCHIP beneficiaries residing in the area who are in need of services offered by such program.

(vi) An analysis of the eligibility requirements and enrollment procedures for the program being evaluated.

(vii) An analysis of the services provided to beneficiaries enrolled in the program being evaluated and the utilization rates for such services.

(viii) An analysis of the structure for the provision of specific services under the program being evaluated.

(ix) An analysis of the costs of providing specific services under the program being evaluated.

(x) An analysis of any procedures for offering Medicare beneficiaries, Medicaid beneficiaries, and SCHIP beneficiaries enrolled in the program being evaluated a choice of services and how the program responds to the preferences of such beneficiaries.

(xi) An analysis of the quality of care provided to, and of the outcomes for, Medicare beneficiaries, Medicaid beneficiaries, and SCHIP beneficiaries, and the families of such beneficiaries, that are enrolled in the program being evaluated.

(xii) An analysis of any ethical, cultural, or legal concerns—

(I) regarding the program being evaluated; and

(II) with the replication of such program in other settings.

(xiii) An analysis of any changes to regulations or of any additional funding that would result in more efficient procedures or improved outcomes under the program being evaluated.

(d) WAIVER AUTHORITY.—The Secretary may waive compliance with any of the requirements of titles XI, XVIII, XIX, and XXI of the Social Security Act (42 U.S.C. 1301 et seq.; 1395 et seq.; 1396 et seq.; 1397aa et seq.) which, if applied, would prevent the demonstration project carried out under this section from effectively achieving the purpose of such project.

(e) REPORTS TO CONGRESS.—

(1) ANNUAL REPORTS BY SECRETARY.—

(A) IN GENERAL.—Beginning 1 year after the date of enactment of this Act, and annually thereafter, the Secretary shall submit to Congress a report on the demonstration project and on the quality of end-of-life care under the Medicare program, the Medicaid program, and SCHIP, together with recommendations for such legislation and administrative actions as the Secretary considers appropriate.

(B) SUMMARY OF RECENT STUDIES.—A report submitted under subparagraph (A) shall include a summary of any recent studies and advice from experts in the health care field regarding the ethical, cultural, and legal issues that may arise when attempting to improve the health care system to meet the needs of individuals with serious and eventually terminal conditions.

(C) CONTINUATION OR REPLICATION OF DEMONSTRATION PROJECTS.—The first report submitted under subparagraph (A) after the 3-year anniversary of the date the Secretary implements the demonstration project shall include recommendations regarding whether such demonstration project should be continued beyond the period described in subsection (a)(3) and whether broad replication of any of the programs conducted under the demonstration project should be initiated.

(2) REPORT BY END-OF-LIFE CARE ADVISORY BOARD ON DEMONSTRATION PROJECT.—

(A) IN GENERAL.—Not later than 2 years after the conclusion of the demonstration project, the End-of-Life Advisory Board shall submit a report to the Secretary and Congress on such project.

(B) CONTENTS.—The report submitted under subparagraph (A) shall contain—

(i) an evaluation of the effectiveness of the demonstration project; and

(ii) recommendations for such legislation and administrative actions as the Board considers appropriate.

(f) FUNDING.—There are appropriated such sums as are necessary for conducting the demonstration project and for preparing and submitting the reports required under subsection (e)(1).

(g) DEFINITIONS.—In this section:

(1) DEMONSTRATION PROJECT.—The term ''demonstration project'' means the demonstration project conducted under this section.

(2) MEDICAID BENEFICIARIES.—The term ''Medicaid beneficiaries'' means individuals who are enrolled in the State Medicaid program.

(3) MEDICAID PROGRAM.—The term ''Medicaid program'' means the health care program under title XIX of the Social Security Act (42 U.S.C. 1395 et seq.).

(4) MEDICARE BENEFICIARIES.—The term ''Medicare beneficiaries'' means individuals who are entitled to, or enrolled for, benefits under part A or enrolled for benefits under part B of the Medicare program.

(5) MEDICARE PROGRAM.—The term ''Medicare program'' means the health care program under title XVIII of the Social Security Act (42 U.S.C. 1395 et seq.).

(6) SCHIP.—The term ''SCHIP'' means the State children's health insurance program under title XXI of the Social Security Act (42 U.S.C. 1397aa et seq.).

(7) SCHIP BENEFICIARY.—The term ''SCHIP beneficiary'' means an individual who is enrolled in SCHIP.

(8) SECRETARY.—The term ''Secretary'' means the Secretary of Health and Human Services.

SEC. 7. ESTABLISHMENT OF END-OF-LIFE CARE ADVISORY BOARD.

(a) ESTABLISHMENT.—There is established within the Department of Health and Human Services an End-of-Life Care Advisory Board (in this section referred to as the ''Board'').

(b) STRUCTURE AND MEMBERSHIP.—

(1) IN GENERAL.—The Board shall be composed of 15 members who shall be appointed by the Secretary of Health and Human Services (in this section referred to as the ''Secretary'').

(2) REQUIRED REPRESENTATION.—The Secretary shall ensure that the following groups, organizations, and associations are represented in the membership of the Board:

(A) An end-of-life consumer advocacy organization.

(B) A senior citizen advocacy organization.

(C) A physician-based hospice or palliative care organization.

(D) A nurse-based hospice or palliative care organization.

(E) A hospice or palliative care provider organization.

(F) A hospice or palliative care representative that serves the veterans population.

(G) A physician-based medical association.

(H) A physician-based pediatric medical association.

(I) A home health-based nurses association.

(J) A hospital-based or health system-based palliative care group.

(K) A children-based or family-based hospice resource group.

(L) A cancer pain management resource group.

(M) A cancer research and policy advocacy group.

(N) An end-of-life care policy advocacy group.

(O) An interdisciplinary end-of-life care academic institution.

(3) ETHNIC DIVERSITY REQUIREMENT.—The Secretary shall ensure that the members of the Board appointed under paragraph (1) represent the ethnic diversity of the United States.

(4) PROHIBITION.—No individual who is a Federal officer or employee may serve as a member of the Board.

(5) TERMS OF APPOINTMENT.—Each member of the Board shall serve for a term determined appropriate by the Secretary.

(6) CHAIRPERSON.—The Secretary shall designate a member of the Board as chairperson.

(c) MEETINGS.—The Board shall meet at the call of the chairperson but not less often than every 3 months.

(d) DUTIES.—

(1) IN GENERAL.—The Board shall advise the Secretary on all matters related to the furnishing of end-of-life care to individuals.

(2) SPECIFIC DUTIES.—The specific duties of the Board are as follows:

(A) CONSULTING.—The Board shall consult with the Secretary regarding—

(i) the development of the outcome standards and measures under section 2;

(ii) conducting the study and submitting the report under section 3; and

(iii) the selection of private entities to conduct evaluations pursuant to section 6(c)(2).

(B) REPORT ON DEMONSTRATION PROJECT.—The Board shall submit the report required under section 6(e)(2).

(e) MEMBERS TO SERVE WITHOUT COMPENSATION.—

(1) IN GENERAL.—All members of the Board shall serve on the Board without compensation for such service.

(2) TRAVEL EXPENSES.—The members of the Board shall be allowed travel expenses, including per diem in lieu of subsistence, at rates authorized for employees of agencies under subchapter I of chapter 57 of title 5, United States Code, while away from their homes or regular places of business in the performance of services for the Board.

(f) STAFF.—

(1) IN GENERAL.—The chairperson of the Board may, without regard to the civil service laws and regulations, appoint and terminate an executive director and such other additional personnel as may be necessary to enable the Board to perform its duties. The employment of an executive director shall be subject to confirmation by the Board.

(2) COMPENSATION.—The chairperson of the Board may fix the compensation of the executive director and other personnel without regard to chapter 51 and subchapter III of chapter 53 of title 5, United States Code, relating to classification of positions and General Schedule pay rates, except that the rate of pay for the executive director and other personnel may not exceed the rate payable for level V of the Executive Schedule under section 5316 of such title.

(3) PERSONNEL AS FEDERAL EMPLOYEES.—

(A) IN GENERAL.—The executive director and any personnel of the Board who are employees shall be employees under section 2105 of title 5, United States Code, for purposes of chapters 63, 81, 83, 84, 85, 87, 89, and 90 of that title.

(B) MEMBERS OF BOARD.—Subparagraph (A) shall not be construed to apply to members of the Board.

(g) DETAIL OF GOVERNMENT EMPLOYEES.—Any Federal Government employee may be detailed to the Board without additional reimbursement (other than the employee's regular compensation), and such detail shall be without interruption or loss of civil service status or privilege.

(h) PROCUREMENT OF TEMPORARY AND INTERMITTENT SERVICES.—The chairperson of the Board may procure temporary and intermittent services under section 3109(b) of title 5, United States Code, at rates for individuals which do not exceed the daily equivalent of the annual rate of basic pay prescribed for level V of the Executive Schedule under section 5316 of such title.

(i) FEDERAL ADVISORY COMMITTEE ACT.—Section 14 of the Federal Advisory Committee Act (5 U.S.C. App.) shall not apply to the Board.

(j) TERMINATION.—The Board shall terminate 90 days after the date on which the Board submits the report under section 6(e)(2).

(k) FUNDING.—Funding for the operation of the Board shall be from amounts otherwise appropriated to the Department of Health and Human Services.

S. 465

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 ''Advance Directives Improvement and Education Act of 2007''.

SEC. 2. ADVANCE DIRECTIVES.

(a) FINDINGS.—Congress makes the following findings:

(1) Every year 2,500,000 people die in the United States. Eighty percent of those people die in institutions such as hospitals, nursing homes, and other facilities. Chronic illnesses, such as cancer and heart disease, account for 2 out of every 3 deaths.

(2) In 1997, the Supreme Court of the United States, in its decisions in Washington v. Glucksberg and Vacco v. Quill, reaffirmed the constitutional right of competent adults to refuse unwanted medical treatment. In those cases, the Court stressed the use of advance directives as a means of safeguarding that right should those adults become incapable of deciding for themselves.

(3) A survey published in 2005 estimated that the overall prevalence of advance directives is 29 percent of the general population, despite the passage of the Patient Self-Determination Act in 1990, which requires that health care providers tell patients about advance directives.

(4) Competent adults should complete advance care plans stipulating their health care decisions in the event that they become unable to speak for themselves. Through the execution of advance directives, including living wills and durable powers of attorney for health care according to the laws of the State in which they reside, individuals can protect their right to express their wishes and have them respected.

(b) PURPOSES.—The purposes of this section are to improve access to information about individuals' health care options and legal rights for care near the end of life, to promote advance care planning and decision-making so that individuals' wishes are known should they become unable to speak for themselves, to engage health care providers in disseminating information about and assisting in the preparation of advance directives, which include living wills and durable powers of attorney for health care, and for other purposes.

(c) MEDICARE COVERAGE OF END-OF-LIFE PLANNING AND CONSULTATIONS AS PART OF INITIAL PREVENTIVE PHYSICAL EXAMINATION.—

(1) IN GENERAL.—Section 1861(ww) of the Social Security Act (42 U.S.C. 1395x(ww)) is amended—

(A) in paragraph (1), by striking ''paragraph (2),'' and inserting ''paragraph (2) and an end-of-life planning consultation (as defined in paragraph (3)),''; and

(B) by adding at the end the following new paragraph:

''(3) For purposes of paragraph (1), the term 'end-of-life planning consultation' means a consultation between the physician and an individual regarding—

''(A) the importance of preparing advance directives in case an injury or illness causes the individual to be unable to make health care decisions;

''(B) the situations in which an advance directive is likely to be relied upon;

''(C) the reasons that the development of a comprehensive end-of-life plan is beneficial and the reasons that such a plan should be updated periodically as the health of the individual changes;

''(D) the identification of resources that an individual may use to determine the requirements of the State in which such individual resides so that the treatment wishes of that individual will be carried out if the individual is unable to communicate those wishes, including requirements regarding the designation of a surrogate decision maker (health care proxy); and

''(E) whether or not the physician is willing to follow the individual's wishes as expressed in an advance directive.''.

(2) EFFECTIVE DATE.—The amendments made by paragraph (1) shall apply to initial preventive physical examinations provided on or after January 1, 2008.

(d) IMPROVEMENT OF POLICIES RELATED TO THE USE AND PORTABILITY OF ADVANCE DIRECTIVES.—

(1) MEDICARE.—Section 1866(f) of the Social Security Act (42 U.S.C. 1395cc(f)) is amended—

(A) in paragraph (1)—

(i) in subparagraph (B), by inserting ''and if presented by the individual (or on behalf of the individual), to include the content of such advance directive in a prominent part of such record'' before the semicolon at the end;

(ii) in subparagraph (D), by striking ''and'' after the semicolon at the end;

(iii) in subparagraph (E), by striking the period at the end and inserting ''; and''; and

(iv) by inserting after subparagraph (E) the following new subparagraph:

''(F) to provide each individual with the opportunity to discuss issues relating to the information provided to that individual pursuant to subparagraph (A) with an appropriately trained professional.'';

(B) in paragraph (3), by striking ''a written'' and inserting ''an''; and

(C) by adding at the end the following new paragraph:

''(5)(A) In addition to the requirements of paragraph (1), a provider of services, Medicare Advantage organization, or prepaid or eligible organization (as the case may be) shall give effect to an advance directive executed outside the State in which such directive is presented, even one that does not appear to meet the formalities of execution, form, or language required by the State in which it is presented to the same extent as such provider or organization would give effect to an advance directive that meets such requirements, except that a provider or organization may decline to honor such a directive if the provider or organization can reasonably demonstrate that it is not an authentic expression of the individual's wishes concerning his or her health care. Nothing in this paragraph shall be construed to authorize the administration of medical treatment otherwise prohibited by the laws of the State in which the directive is presented.

''(B) The provisions of this paragraph shall preempt any State law to the extent such

law is inconsistent with such provisions. The provisions of this paragraph shall not preempt any State law that provides for greater portability, more deference to a patient's wishes, or more latitude in determining a patient's wishes.''.

(2) MEDICAID.—Section 1902(w) of the Social Security Act (42 U.S.C. 1396a(w)) is amended—

(A) in paragraph (1)—

(i) in subparagraph (B)—

(I) by striking ''in the individual's medical record'' and inserting ''in a prominent part of the individual's current medical record''; and

(II) by inserting ''and if presented by the individual (or on behalf of the individual), to include the content of such advance directive in a prominent part of such record'' before the semicolon at the end;

(ii) in subparagraph (D), by striking ''and'' after the semicolon at the end;

(iii) in subparagraph (E), by striking the period at the end and inserting ''; and''; and

(iv) by inserting after subparagraph (E) the following new subparagraph:

''(F) to provide each individual with the opportunity to discuss issues relating to the information provided to that individual pursuant to subparagraph (A) with an appropriately trained professional.'';

(B) in paragraph (4), by striking ''a written'' and inserting ''an''; and

(C) by adding at the end the following paragraph:

''(6)(A) In addition to the requirements of paragraph (1), a provider or organization (as the case may be) shall give effect to an advance directive executed outside the State in which such directive is presented, even one that does not appear to meet the formalities of execution, form, or language required by the State in which it is presented to the same extent as such provider or organization would give effect to an advance directive that meets such requirements, except that a provider or organization may decline to honor such a directive if the provider or organization can reasonably demonstrate that it is not an authentic expression of the individual's wishes concerning his or her health care. Nothing in this paragraph shall be construed to authorize the administration of medical treatment otherwise prohibited by the laws of the State in which the directive is presented.

''(B) The provisions of this paragraph shall preempt any State law to the extent such law is inconsistent with such provisions. The provisions of this paragraph shall not preempt any State law that provides for greater portability, more deference to a patient's wishes, or more latitude in determining a patient's wishes.''.

(3) EFFECTIVE DATES.—

(A) IN GENERAL.—Subject to subparagraph (B), the amendments made by paragraphs (1) and (2) shall apply to provider agreements and contracts entered into, renewed, or extended under title XVIII of the Social Security Act (42 U.S.C. 1395 et seq.), and to State plans under title XIX of such Act (42 U.S.C. 1396 et seq.), on or after such date as the Secretary of Health and Human Services specifies, but in no case may such date be later than 1 year after the date of enactment of this Act.

(B) EXTENSION OF EFFECTIVE DATE FOR STATE LAW AMENDMENT.—In the case of a State plan under title XIX of the Social Security Act (42 U.S.C. 1396 et seq.) which the Secretary of Health and Human Services determines requires State legislation in order for the plan to meet the additional requirements imposed by the amendments made by paragraph (2), the State plan shall not be regarded as failing to comply with the requirements of such title solely on the basis of its failure to meet these additional requirements before the first day of the first calendar quarter beginning after the close of the first regular session of the State legislature that begins after the date of enactment of this Act. For purposes of the previous sentence, in the case of a State that has a 2-year legislative session, each year of the session is considered to be a separate regular session of the State legislature.

(e) INCREASING AWARENESS OF THE IMPORTANCE OF END-OF-LIFE PLANNING.—Title III of the Public Health Service Act (42 U.S.C. 241 et seq.) is amended by adding at the end the following new part:

''PART R—PROGRAMS TO INCREASE AWARENESS OF ADVANCE DIRECTIVE PLANNING ISSUES

''SEC. 399Z–1. ADVANCE DIRECTIVE EDUCATION CAMPAIGNS AND INFORMATION CLEARINGHOUSES.

''(a) ADVANCE DIRECTIVE EDUCATION CAMPAIGN.—The Secretary shall, directly or through grants awarded under subsection (c), conduct a national public education campaign—

''(1) to raise public awareness of the importance of planning for care near the end of life;

''(2) to improve the public's understanding of the various situations in which individuals may find themselves if they become unable to express their health care wishes;

''(3) to explain the need for readily available legal documents that express an individual's wishes, through advance directives (including living wills, comfort care orders, and durable powers of attorney for health care); and

''(4) to educate the public about the availability of hospice care and palliative care.

''(b) INFORMATION CLEARINGHOUSE.—The Secretary, directly or through grants awarded under subsection (c), shall provide for the establishment of a national, toll-free, information clearinghouse as well as clearinghouses that the public may access to find out about State-specific information regarding advance directive and end-of-life decisions.

''(c) GRANTS.—

''(1) IN GENERAL.—The Secretary shall use at least 60 percent of the funds appropriated under subsection (d) for the purpose of awarding grants to public or nonprofit private entities (including States or political subdivisions of a State), or a consortium of any of such entities, for the purpose of conducting education campaigns under subsection (a) and establishing information clearinghouses under subsection (b).

''(2) PERIOD.—Any grant awarded under paragraph (1) shall be for a period of 3 years.

''(d) AUTHORIZATION OF APPROPRIATIONS.—There are authorized to be appropriated to carry out this section $25,000,000.''.

(f) GAO STUDY AND REPORT ON ESTABLISHMENT OF NATIONAL ADVANCE DIRECTIVE REGISTRY.—

(1) STUDY.—The Comptroller General of the United States shall conduct a study on the feasibility of a national registry for advance directives, taking into consideration the constraints created by the privacy provisions enacted as a result of the Health Insurance Portability and Accountability Act of 1996 (Public Law 104–191).

(2) REPORT.—Not later than 18 months after the date of enactment of this Act, the Comptroller General of the United States shall submit to Congress a report on the study conducted under paragraph (1) together with recommendations for such legislation and administrative action as the Comptroller General of the United States determines to be appropriate.

(g) EFFECTIVE DATE.—Except as provided in subsections (c) and (d), this section and the amendments made by this section shall take effect on the date of enactment of this Act.

Mr. NELSON of Florida. Mr. President, I am pleased to be joined by my colleagues and cosponsors Senators JAY ROCKEFELLER and RICHARD LUGAR as we introduce the Advance Directives Improvement and Education Act of 2007.

The Advance Directives Improvement and Education Act of 2007 has a simple purpose: to encourage all adults in America, especially those 65 and older, to think about, talk about and write down their wishes for medical care near the end of life should they become unable to make decisions for themselves. Advance directives, which include a living will stating the individual's preferences for care, and a power of attorney for health care, are critical documents that each of us should have. The goal is clear, but reaching it requires that we educate the public about the importance of advance directives, offer opportunities for discussion of the issues, and reinforce the requirement that health care providers honor patients' wishes. This bill is designed to do just that.

The Advance Directives Improvement and Education Act of 2007 would encourage new Medicare beneficiaries to prepare advance directives by including a physician consultation on advance directives in each ''Welcome to Medicare'' physical exam. This initial consultation would cover the importance of preparing advance directives, when these documents are most likely to be used, and where to find additional resources and information. The conversation will also enable physicians to learn about their patients' wishes, fears, religious beliefs, and life experiences that might influence their medical care wishes. These are important aspects of a physician-patient relationship that are too often unaddressed.

Another part of our bill would provide funds for the Department of Health and Human Services, HHS, to conduct a public education campaign to raise awareness of the importance of planning for care near the end of life. This campaign would explain what advance directives are, where they are available, what questions need to be asked and answered, and what to do with the executed documents. HHS, directly or through grants, would also establish an information clearinghouse where consumers could receive State-specific information and consumer-friendly documents and publications.

The bill also contains language that would make all advance directives ''portable,'' that is, useful from one State to another. If an out-of-State directive is presented, it will be presumed valid unless the health care provider can reasonably demonstrate that it is not an authentic expression of the individual's wishes concerning his or her health care.

We all know about the tragic situation that occurred in Florida with Terri Schiavo and her family. She was

a young woman who was the subject of a debate about her treatment between her husband and her parents, a debate that was a court case and a legislative quagmire. Most experts agree that if she had an advance directive that made her wishes clear and named a health care proxy, there would have been no question as to who could decide the course of her care.

One of the great legacies of Terri Schiavo's life will be that she began a national dialogue about end-of-life care and got people discussing living wills. Regardless of our views on the ethical, legal and constitutional issues surrounding her case, we all can agree that more people now than ever know the importance of having end-of-life discussions with their family, doctor, clergy or attorney. This bill would build upon this national dialogue and encourage more Americans to learn about and fill out advance directives.

This body is a legislative institution, not a medical one. We cannot legislate good medical care or compassion. What we can do, what I hope we will do, is to enact this bill so that the American public can participate in improving end-of-life care. If we can do that, we will have done a great deal.

S. 466

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 ''Medicare End-of-Life Care Planning Act of 2007''.

SEC. 2. MEDICARE COVERAGE OF AN END-OF-LIFE PLANNING CONSULTATION AS PART OF AN INITIAL PREVENTIVE PHYSICAL EXAMINATION.

(a) IN GENERAL.—Section 1861(ww) of the Social Security Act (42 U.S.C. 1395x(ww)) is amended—

(1) in paragraph (1), by striking ''paragraph (2),'' and inserting ''paragraph (2) and an end-of-life planning consultation (as defined in paragraph (3)),''; and

(2) by adding at the end the following new paragraph:

''(3) For purposes of paragraph (1), the term 'end-of-life planning consultation' means a consultation between the physician and an individual regarding—

''(A) the importance of preparing advance directives in case an injury or illness causes the individual to be unable to make health care decisions;

''(B) the situations in which an advance directive is likely to be relied upon;

''(C) the reasons why the development of a comprehensive end-of-life plan is beneficial and the reasons why such a plan should be updated periodically as the health of the individual changes;

''(D) the identification of resources that an individual may use to determine the requirements of the State in which such individual resides so that the treatment wishes of that individual will be carried out if the individual is unable to communicate those wishes, including requirements regarding the designation of a surrogate decision maker (health care proxy); and

''(E) whether or not the physician is willing to follow the individual's wishes as expressed in an advance directive.''.

(b) EFFECTIVE DATE.—The amendments made by this section shall apply to initial preventive physical examinations provided on or after January 1, 2008.

By Mr. DODD (for himself, Mr. GRASSLEY, Mr. WYDEN, Mr. BINGAMAN, Mr. DURBIN, and Mr. HARKIN):

S. 467. A bill to amend the Public Health Service Act to expand the clinical trials drug data bank; to the Committee on Health, Education, Labor and Pensions.

By Mr. GRASSLEY (for himself, Mr. DODD, Ms. MIKULSKI, and Mr. BINGAMAN):

S. 468. A bill to amend the Federal Food, Drug, and Cosmetic Act with respect to drug safety, and for other purposes; to the Committee on Health, Education, Labor, and Pensions.

Mr. DODD. Mr. President, I rise today to introduce the Fair Access to Clinical Trials (FACT) Act. I want to begin by thanking Senators GRASSLEY, WYDEN, BINGAMAN, DURBIN, and HARKIN for joining me in introducing this legislation. I also would like to recognize the leadership of Senator JOHNSON who was involved in the crafting of this legislation from the beginning and who has been a long-standing supporter of the FACT Act.

Our bill will create an electronic databank for clinical trials of drugs, biological products, and medical devices. Such a databank will ensure that physicians, researchers, the general public, and patients seeking to enroll in clinical trials have access to basic information about those trials. It will require manufacturers and other researchers to reveal the results of clinical trials so that clinically important information will be available to all Americans, and physicians will have all the information necessary to make appropriate treatment decisions for their patients.

Events of the past few years have made it clear that such a databank is needed. For example, serious questions were raised about the effectiveness and safety of antidepressants when used in children and youth. It has now become clear that the existing data indicates that these drugs may very well put children at risk. However, because the data from antidepressant clinical trials was not publicly available, it took years for this risk to be realized. In the meantime, millions of children have been prescribed antidepressants by well-meaning physicians. While these drugs undoubtedly helped many of these children, they also led to greater suffering for others.

The news is similarly disturbing for a popular class of painkillers known as Cox-2 inhibitors. These medicines, taken by millions of Americans, have been associated with an increased risk of cardiovascular adverse events, such as heart attack and stroke. It has been suggested that one of these medicines, which has since been pulled from the market, may have been responsible for tens of thousands of deaths.

Most recently, a drug manufacturer acknowledged that it did not inform the Food and Drug Administration (FDA) or the public about the results of a 67,000 person study it conducted of an FDA-approved drug used commonly during heart surgery to reduce the need for a transfusion. The study revealed the drug may increase patients' risk of death, serious kidney damage, congestive heart failure, and stroke.

Unfortunately, these are just a few examples of stories that have become all too common. It has been suggested that negative data might actually have been suppressed; and if this is discovered to be the case, those responsible should be dealt with harshly. However, because of what is known as ''publication bias,'' the information available to the public and physicians can be misleading even without nefarious motives. The simple fact is that studies with a positive result are far more likely to be published, and thus publicly available, than a study with a negative result. Physicians and patients hear the good news. Rarely do they hear the bad news. In the end, the imbalance of available information hurts patients.

Our bill would correct this imbalance in information, and prevent manufacturers from suppressing negative data. It would do so by creating a two-part databank, consisting of an expansion of clinicaltrials.gov—an existing registry that is operated by the National Library of Medicine (NLM)—and a new database for clinical trial results.

Under the FACT Act, the registry would continue to operate as a resource for patients seeking to enroll in clinical trials for drugs and biological products intended to treat serious or life-threatening conditions—and for the first time, it would also include medical device trials. The new results database would include all trials (except for preliminary safety trials), and would require the submission of clinical trial results data.

Our legislation would enforce the requirement to submit information to the databank in two ways. First, by requiring registration as a condition of Institutional Review Board (IRB) approval, no trial could begin without submitting preliminary information to the registry and database. This information would include the purpose of the trial, the estimated date of trial completion, as well as all of the information necessary to help patients to enroll in the trial.

Once the trial is completed, the researcher or manufacturer is required to submit the results to the database. If they refuse to do so, they are subject to monetary penalties or, in the case of federally-funded research, a restriction on future federal funding. It is my belief that these enforcement mechanisms will ensure broad compliance. However, in the rare case where a manufacturer does not comply, this legislation also gives the FDA the authority to publicize the required information.

Let me also say that any time you are collecting large amounts of data and making it public, protecting patient privacy and confidentiality is

paramount. Our legislation would in no way threaten patient privacy. The simple fact is that under this bill, no individually-identifiable information would be available to the public.

I believe that the establishment of a clinical trials databank is absolutely necessary for the health and well-being of the American public. But I would also like to highlight two other benefits that such a databank will have. First, it has the potential to reduce health care costs. Studies have shown that publication bias also leads to a bias toward new and more expensive treatment options. A databank could help make it clear that in some cases less expensive treatments are just as effective for patients.

In addition, a databank will ensure that the sacrifice made by patients who enroll in clinical trials is not squandered. We owe it to patients to make sure that their participation in a trial will benefit other individuals suffering from the same illness or condition by making the results of the trial public, no matter the outcome of the trial.

The problems associated with publication bias have recently drawn more attention from the medical community, and there is broad consensus that a clinical trials registry is one of the best ways to address the issue. Accordingly, the American Medical Association (AMA) has recommended creating such a databank. Additionally, the major medical journals have established a policy that they will only publish the results of trials that were registered in a public database before the trial began. Our legislation meets all of the minimum criteria for a trial registry set out by the International Committee of Medical Journal Editors. In fact, our bill closely follows recommendations issued by the Institute of Medicine (IOM) in its recent report on drug safety.

To its credit, the pharmaceutical industry has also acknowledged the problem, and has created a database where manufacturers can voluntarily submit clinical trials data. I applaud this step. However, if our objective is to provide the public with a complete and consistent supply of information, a voluntary database is unlikely to achieve that goal. Some companies will provide information, but others may decide not to participate. We need a clinical trials framework that is not just fair to all companies, but provides patients with the peace of mind that they will receive complete information about the medicines they rely on.

The American drug industry is an extraordinary success story. As a result of the innovations that this industry has spawned, millions of lives have been improved and saved in our country and around the globe. Due to the importance of these medicines to our health and well-being, I have consistently supported sound public policies to help the industry succeed in protecting the public's health and well-being. This legislation aims to build upon the successes of this industry, and help ensure that the positive changes to our health care system that prescription drugs have brought are not undermined by controversies such as the ones surrounding antidepressants and Cox-2 inhibitors, which are at least in part based on a lack of public information. This bill will help ensure that well-informed patients will use new and innovative medicines.

Creating a clinical trials databank is a critical step toward ensuring the safety of drugs, biological products, and medical devices in this country—but it should not be the end of our efforts. However, other steps are necessary to fully restore patient confidence in the safety of the medicines they rely on.

That is why today I am also introducing the Food and Drug Administration Safety Act (FDASA) with Senator GRASSLEY. We are joined by Senators MIKULSKI and BINGAMAN in introducing this legislation and thank them for their support for reforming our nation's system to ensure that FDA-approved drugs being used by millions are safe and effective.

Our legislation would enhance the FDA's drug-safety monitoring system by setting up an independent center within the FDA called the Center for Postmarket Evaluation and Research for Drugs and Biologics (CPER). This Center would be responsible for monitoring the safety of drugs and biologics once they are on the market, in consultation with other existing Centers at the FDA, and would have the authority to take corrective action if a drug or biologic presents a risk to patients. Under the bill, the Center Director is authorized to require manufacturers to conduct post-market clinical or observational studies if there are questions about the safety or efficacy of a drug or biologic once it is already on the market. The Center Director can take corrective actions to include labeling changes, restricted distribution, and other risk management tools if an unreasonable risk is found to exist. The bill also gives the Center Director the authority to review drug advertisements before they are disseminated, and to require certain disclosures about increased risk, and in extreme cases, the authority to pull the product off the market. Our bill authorizes $500 million over the next 5 years to provide the new center with the resources necessary to carry out the critically important provisions of this legislation.

Under our legislation, the Director of CPER will report directly to the FDA Commissioner. Our bill will ensure that CPER consults with the other Centers at FDA as it conducts risk assessments, benefiting from their knowledge and expertise, but not being beholden to them if corrective action is needed.

These new authorities will allow the FDA to act quickly to get answers when there are questions about the safety of a drug, and to act decisively to mitigate the risks when the evidence shows that a drug presents a safety issue. With these authorities, we will never again have a situation where a critical labeling change takes 2 years to complete, as was the case with Vioxx. When we are talking about drugs that are already on the market and in widespread use, any delay can put millions of patients in harm's way.

By creating CPER we hope to restore confidence in the medicines that so many Americans rely on to safeguard their health and well-being. Patients should have the peace of mind that the drugs they take to help them will not hurt them instead. We must restore public confidence in the words ''FDA-Approved.'' Unfortunately, events of the past few years have seriously tarnished the FDA's image and put millions of patients at undue risk. Recent developments have cast into doubt the FDA's ability to ensure that the drugs that it approves are safe—especially once they are on the market. These concerns are bad for patients, bad for physicians, and bad for the pharmaceutical industry.

Like many Americans, I have been deeply disturbed by the revelations of the significant risk associated with widely-used medications to treat pain and depression. These revelations raise legitimate questions about the safety of drugs that have already been approved. It would be one thing if these drugs were in a trial phase, but safety issues are being identified in drugs once they are on the market and in widespread use. Health risks significant enough to remove drugs from the market or significantly restrict their use are becoming clear only after millions of Americans have been exposed to real or potential harm.

It has been estimated that more than 100,000 Americans might have been seriously injured or killed by a popular pain medication, while millions of children have been prescribed antidepressants that could put them at risk. This recent spate of popular medicines being identified as unsafe underscores the need to take additional steps to monitor and protect patient safety after a drug has been approved. Allowing the status quo on drug safety at the FDA is unacceptable. Real reform is needed now.

An internal study conducted by the Department of Health and Human Services (HHS) Office of the Inspector General in 2002 revealed that approximately one-fifth of drug reviewers were pressured to approve a drug despite concerns about safety, efficacy, or quality. In addition, more than one-third said they were ''not at all'' or only ''somewhat'' confident that final decisions of the Center for Drug Evaluation and Research (CDER) adequately assessed safety. A more recent survey of 997 FDA scientists conducted by the Union of Concerned Scientists and the Public Employees for Environmental Responsibility found that 420

FDA scientists reported that they knew of cases in which HHS or FDA political appointees inappropriately injected themselves into FDA determinations or actions.

I look forward to working with industry, physicians, medical journals, patient groups, and my colleagues—including the Chairman and Ranking Member of the Health, Education, Labor, and Pensions Committee, Senator KENNEDY and Senator ENZI—to move this legislation forward. These bills have already been endorsed by Consumers Union, the U.S. Public Interest Research Group (PIRG), the National Women's Health Network, and Public Citizen. I thank these organizations for lending their expertise as we crafted these bills. I also want to recognize the New England Journal of Medicine and the American Psychiatric Association for their support in the crafting of the FACT Act.

Clinical trials are critically important to protecting the safety and health of the American public. For this reason, clinical trial results must not be treated as information that can be hidden from scrutiny. Recent events have made it clear that a clinical trials databank is needed. Patients and physicians agree that such a databank is important to our public health. At the same time, there have been disturbing reports that suggest the FDA does not place enough emphasis on drug safety, and that concerns raised by those in the Office of Surveillance and Epidemiology (formerly the Office of Drug Safety) at CDER are sometimes ignored and even suppressed. Our legislation will ensure that those who are responsible for monitoring the safety of drugs already on the market at the FDA will have the independence, resources, and authority to ensure medicines intended to help patients won't instead end up causing them harm. I urge my colleagues to support these bills, and I am hopeful that they will become law as soon as possible.

I ask unanimous consent that a letter from the American Psychiatric Association supporting the FACT Act be printed in the RECORD.

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

AMERICAN PSYCHIATRIC ASSOCIATION,
Arlington, VA, January 31, 2007.

Hon. CHRISTOPHER DODD,
U.S. Senate,
Washington, DC.

DEAR SENATOR DODD: The American Psychiatric Association (APA) would like to commend and congratulate you on your efforts to strengthen and improve clinical trial registries. The FACT Act's goals of revamping the Food and Drug Administration's post-marketing surveillance by ensuring that access to clinical trials information is accessible and available to the scientific community and the general public is a goal shared by the APA.

The APA is the national medical specialty society representing more than 37,000 psychiatric physicians nationwide who specialize in the diagnosis and treatment of mental and emotional illnesses and substance use disorders. APA advocates for patient access to information and supports further post-market research of medications to ensure the safety of patients. APA member David Fassler, M.D. testified before the Senate Health, Education, Labor and Pensions Committee on March 1, 2005 and subsequent FDA Advisory Committee meetings. Dr. Fassler's testimony focused on key recommendations to improve the FDA's drug approval process outlining: The importance of access to comprehensive clinical trial data including negative trials and unpublished results to be housed in a publicly accessible registry; The need for ongoing post-marketing surveillance with increased funding for follow up; and The necessity of a workforce of researchers, including experts who can assist with the design, oversight, interpretation and reporting of clinical research.

The APA thanks you again for your dedication and commitment to enhance the nation's drug safety monitoring system. We look forward to working with you in ensuring that clinical trial data is transparent and accountable in order for patients to make well informed decisions. As your staff move forward with further action on legislation, Lizbet Boroughs, Deputy Director, Government Relations for the APA or Chatrane Birbal, Federal Legislative Coordinator may be reached at *lboroughs@psych.org* 703/489–5907 or *cbirbal@psych.org* 703/907–8584 respectively.

Sincerely,

James H. Scully, Jr.,
CEO and Medical Director.

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

S. 467

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 ''Fair Access to Clinical Trials Act of 2007'' or the ''FACT Act''.

SEC. 2. PURPOSE.

It is the purpose of this Act—

(1) to create a publicly accessible national data bank of clinical trial information comprised of a clinical trial registry and a clinical trial results database;

(2) to foster transparency and accountability in health-related intervention research and development;

(3) to maintain a clinical trial registry accessible to patients and health care practitioners seeking information related to ongoing clinical trials for serious or life-threatening diseases and conditions; and

(4) to establish a clinical trials results database of all publicly and privately funded clinical trial results regardless of outcome, that is accessible to the scientific community, health care practitioners, and members of the public.

SEC. 3. CLINICAL TRIALS DATA BANK.

(a) IN GENERAL.—Subsection (i) of section 402 of the Public Health Service Act (42 U.S.C. 282), as amended by Public Law 109–482, is amended—

(1) in paragraph (1)(A), by striking ''for drugs for serious or life-threatening diseases and conditions'';

(2) in paragraph (2), by striking ''available to individuals with serious'' and all that follows through the period and inserting ''accessible to patients, other members of the public, health care practitioners, researchers and the scientific community. In making information about clinical trials publicly available, the Secretary shall seek to be as timely and transparent as possible.'';

(3) by redesignating paragraphs (4) and (5), as paragraphs (8) and (9), respectively;

(4) by striking paragraph (3) and inserting the following:

''(3) The data bank shall include the following:

''(A)(i) A registry of clinical trials (in this subparagraph referred to as the 'registry') of health-related interventions (whether federally or privately funded).

''(ii) The registry shall include information for all clinical trials conducted to test the safety or effectiveness (including comparative effectiveness) of any drug, biological product, or device (including those drugs, biological products, or devices approved or cleared by the Secretary) intended to treat serious or life-threatening diseases and conditions, except those Phase I clinical trials conducted to test solely the safety of an unapproved drug or unlicensed biological product, or pilot or feasibility studies conducted to confirm the design and operating specifications of an unapproved or not yet cleared medical device. For purposes of this section, Phase I clinical trials are trials described in section 313.12(a) of title 21, Code of Federal Regulations (or any successor regulations).

''(iii) The registry may include information for—

''(I) Phase I clinical trials conducted to test solely the safety of an unapproved drug or unlicensed biological product, or pilot or feasibility studies conducted to confirm the design and operating specifications of an unapproved or not yet cleared medical device with the consent of the responsible person; and

''(II) clinical trials of other health-related interventions with the consent of the responsible person.

''(iv) The information to be included in the registry under this subparagraph shall include the following:

''(I) Descriptive information, including a brief title, trial description in lay terminology, trial phase, trial type, trial purpose, description of the primary and secondary clinical outcome measures to be examined in the trial, the time at which the outcome measures will be assessed, and the dates and details of any revisions to such outcomes.

''(II) Recruitment information, including eligibility and exclusion criteria, a description of whether, and through what procedure, the manufacturer or sponsor of the investigation of a new drug will respond to requests for protocol exception, with appropriate safeguards, for single-patient and expanded protocol use of the new drug, particularly in children, a statement as to whether the trial is closed to enrollment of new patients, overall trial status, individual site status, and estimated completion date. For purposes of this section the term 'completion date' means the date of the last visit by subjects in the trial for the outcomes described in subclause (I).

''(III) Location and contact information, including the identity of the responsible person.

''(IV) Administrative data, including the study sponsor and the study funding source.

''(V) Information pertaining to experimental treatments for serious or life-threatening diseases and conditions (whether federally or privately funded) that may be available—

''(aa) under a treatment investigational new drug application that has been submitted to the Secretary under section 360bbb(c) of title 21, Code of Federal Regulations; or

''(bb) as a Group C cancer drug (as defined by the National Cancer Institute).

''(B)(i) A clinical trial results database (in this subparagraph referred to as the 'database') of health-related interventions (whether federally or privately funded).

''(ii) The database shall include information for all clinical trials conducted to test the safety or effectiveness (including comparative effectiveness) of any drug, biological product, or device (including those drugs, biological products, or devices approved or cleared by the Secretary), except those Phase I clinical trials conducted to test solely the safety of an unapproved drug or unlicensed biological product, or pilot or feasibility studies conducted to confirm the design and operating specifications of an unapproved or not yet cleared medical device.

''(iii) The database may include information for—

''(I) Phase I clinical trials conducted to test solely the safety of an unapproved drug or unlicensed biological product, or pilot or feasibility studies conducted to confirm the design and operating specifications of an unapproved or not yet cleared medical device with the consent of the responsible person; and

''(II) clinical trials of other health-related interventions with the consent of the responsible person.

''(iv) The information to be included in the database under this subparagraph shall include the following:

''(I) Descriptive information, including—

''(aa) a brief title;

''(bb) the drug, biological product or device to be tested;

''(cc) a trial description in lay terminology;

''(dd) the trial phase;

''(ee) the trial type;

''(ff) the trial purpose;

''(gg) demographic data such as age, gender, or ethnicity of trial participants;

''(hh) the estimated completion date for the trial; and

''(ii) the study sponsor and the study funding source.

''(II) A description of the primary and secondary clinical outcome measures to be examined in the trial, the time at which the outcome measures will be assessed, and the dates and details of any revisions to such outcomes.

''(III) The actual completion date of the trial and the reasons for any difference from such actual date and the estimated completion date submitted pursuant to subclause (I)(ii). If the trial is not completed, the termination date and reasons for such termination.

''(IV) A summary of the results of the trial in a standard, non-promotional summary format (such as ICHE3 template form), including the trial design and methodology, results of the primary and secondary outcome measures as described in subclause (II), summary data tables with respect to the primary and secondary outcome measures, including information on the statistical significance or lack thereof of such results.

''(V) Safety data concerning the trial (including a summary of all adverse events specifying the number and type of such events, data on prespecified adverse events, data on serious adverse events, and data on overall deaths).

''(VI) Any publications in peer reviewed journals relating to the trial. If the trial results are published in a peer reviewed journal, the database shall include a citation to and, when available, a link to the journal article.

''(VII) A description of the process used to review the results of the trial, including a statement about whether the results have been peer reviewed by reviewers independent of the trial sponsor.

''(VIII) If the trial addresses the safety, effectiveness, or benefit of a use not described in the approved labeling for the drug, biological product, or device, a statement, as appropriate, displayed prominently at the beginning of the data in the registry with respect to the trial, that the Food and Drug Administration—

''(aa) is currently reviewing an application for approval of such use to determine whether the use is safe and effective;

''(bb) has disapproved an application for approval of such use;

''(cc) has reviewed an application for approval of such use but the application was withdrawn prior to approval or disapproval; or

''(dd) has not reviewed or approved such use as safe and effective.

''(IX) If data from the trial has not been submitted to the Food and Drug Administration, an explanation of why it has not been submitted.

''(X) A description of the protocol used in such trial to the extent necessary to evaluate the results of such trial.

''(4)(A)(i) Not later than 90 days after the date of the completion of the review by the Food and Drug Administration of information submitted by a sponsor in support of a new drug application, or a supplemental new drug application, whether or not approved by the Food and Drug Administration, the Commissioner of Food and Drugs shall make available to the public the full reviews conducted by the Administration of such application, including documentation of significant differences of opinion and the resolution of those differences.

''(ii) When submitting information in support of a new drug application or a supplemental new drug application, the sponsor shall certify, in writing, that the information submitted to the Food and Drug Administration complies with the requirements of the Federal Food, Drug, and Cosmetic Act and that such information presented is accurate.

''(iii) If the sponsor fails to provide certification as specified under clause (ii), the Secretary shall transmit to the sponsor a notice stating that such sponsor shall submit the certification by the date determined by the Secretary. If, by the date specified by the Secretary in the notice under this clause, the Secretary has not received the certification, the Secretary, after providing the opportunity for a hearing, shall order such sponsor to pay a civil monetary penalty of $10,000 for each day after such date that the certification is not submitted.

''(iv) If the Secretary determines, after notice and opportunity for a hearing, that the sponsor knew or should have known that the information submitted in support of a new drug application or a supplemental new drug application was inaccurate, the Secretary shall order such sponsor to pay a civil monetary penalty of not less than $100,000 but not to exceed $2,000,000 for any 30-day period.

''(B)(i) The Secretary shall deposit the funds collected under subparagraph (A) into an account and use such funds, in consultation with the Director of the Agency for Healthcare Research and Quality, to fund studies that compare the clinical effectiveness of 2 or more treatments for similar diseases or conditions.

''(ii) The Secretary shall award funding under clause (i) based on a priority list established not later than 6 months after the date of enactment of the FACT Act by the Director of the Agency for Healthcare Research and Quality and periodically updated as determined appropriate by the Director.

''(C) Not later than 90 days after the date of the completion of a written consultation on a drug concerning the drug's safety conducted by the Office of Surveillance and Epidemiology, regardless of whether initiated by such Office or outside of the Office, the Commissioner of Food and Drugs shall make available to the public a copy of such consultation in full.

''(D) Nothing in this paragraph shall be construed to alter or amend section 301(j) or section 1905 of title 18, United States Code.

''(E) This paragraph shall supersede section 552 of title 5, United States Code.

''(5) The information described in subparagraphs (A) and (B) of paragraph (3) shall be in a format that can be readily accessed and understood by members of the general public, including patients seeking to enroll as subjects in clinical trials.

''(6) The Secretary shall assign each clinical trial a unique identifier to be included in the registry and in the database described in subparagraphs (A) and (B) of paragraph (3). To the extent practicable, this identifier shall be consistent with other internationally recognized and used identifiers.

''(7) To the extent practicable, the Secretary shall ensure that where the same information is required for the registry and the database described in subparagraphs (A) and (B) of paragraph (3), a process exists to allow the responsible person to make only one submission.''; and

(5) by adding at the end the following:

''(10) In this section, the term 'clinical trial' with respect to the registry and the database described in subparagraphs (A) and (B) of paragraph (3) means a research study in human volunteers to answer specific health questions, including treatment trials, prevention trials, diagnostic trials, screening trials, and quality of life trials.''.

(b) ACTIONS OF SECRETARY REGARDING CLINICAL TRIALS.—Section 402 of the Public Health Service Act (42 U.S.C. 282), as amended by Public Law 109–482, is amended—

(1) by redesignating subsections (j) and (k) as subsections (o) and (p), respectively; and

(2) by inserting after subsection (i), the following:

''(j) FEDERALLY SUPPORTED TRIALS.—

''(1) ALL FEDERALLY SUPPORTED TRIALS.—With respect to any clinical trial described in subsection (i)(3)(B) that is supported solely by a grant, contract, or cooperative agreement awarded by the Secretary, the principal investigator of such trial shall, not later than the date specified in paragraph (2), submit to the Secretary—

''(A) the information described in subclauses (II) through (X) of subsection (i)(3)(B)(iv), and with respect to clinical trials in progress on the date of enactment of the FACT Act, the information described in subclause (I) of subsection (i)(3)(B)(iv); or

''(B) a statement containing information sufficient to demonstrate to the Secretary that the information described in subparagraph (A) cannot reasonably be submitted, along with an estimated date of submission of the information described in such subparagraph.

''(2) DATE SPECIFIED.—The date specified in this paragraph shall be the date that is 1 year from the earlier of—

''(A) the estimated completion date of the trial, as submitted under subsection (i)(3)(B)(vi)(I)(ii); or

''(B) the actual date of the completion or termination of the trial.

''(3) CONDITION OF FEDERAL GRANTS, CONTRACTS, AND COOPERATIVE AGREEMENTS.—

''(A) CERTIFICATION OF COMPLIANCE.—To be eligible to receive a grant, contract, or cooperative agreement from the Secretary for the conduct or support of a clinical trial described in subsection (i)(3)(B), the principal investigator involved shall certify to the Secretary that—

''(i) such investigator shall submit data to the Secretary in accordance with this subsection; and

''(ii) such investigator has complied with the requirements of this subsection with respect to other clinical trials conducted by

such investigator after the date of enactment of the FACT Act.

''(B) FAILURE TO SUBMIT CERTIFICATION.—An investigator that fails to submit a certification as required under subparagraph (A) shall not be eligible to receive a grant, contract, or cooperative agreement from the Secretary for the conduct or support of a clinical trial described in subsection (i)(3)(B).

''(C) FAILURE TO COMPLY WITH CERTIFICATION.—If, by the date specified in paragraph (2), the Secretary has not received the information or statement described in paragraph (1), the Secretary shall—

''(i) transmit to the principal investigator involved a notice specifying the information or statement required to be submitted to the Secretary and stating that such investigator shall not be eligible to receive further funding from the Secretary if such information or statement is not submitted to the Secretary within 30 days of the date on which such notice is transmitted; and

''(ii) include and prominently display, until such time as the Secretary receives the information or statement described in paragraph (1), as part of the record of such trial in the database described in subsection (i), a notice stating that the results of such trials have not been reported as required by law.

''(D) FAILURE TO COMPLY WITH NOTICE.—If by the date that is 30 days after the date on which the notice described in subparagraph (C) is transmitted, the Secretary has not received from the principal investigator involved the information or statement required pursuant to such notice, the Secretary may not award a grant, contract, cooperative agreement, or any other award to such principal investigator until such principal investigator submits to the Secretary the information or statement required pursuant to such notice.

''(E) SUBMISSION OF STATEMENT BUT NOT INFORMATION.—

''(i) IN GENERAL.—If by the date specified in paragraph (2), the Secretary has received a statement described in paragraph (1)(B) but not the information described in paragraph (1)(A), the Secretary shall transmit to the principal investigator involved a notice stating that such investigator shall submit such information by the date determined by the Secretary in consultation with such investigator.

''(ii) FAILURE TO COMPLY WITH CERTIFICATION.—If, by the date specified by the Secretary in the notice under clause (i), the Secretary has not received the information described in paragraph (1)(B), the Secretary shall—

''(I) transmit to the principal investigator involved a notice specifying the information required to be submitted to the Secretary and stating that such investigator shall not be eligible to receive further funding from the Secretary if such information is not submitted to the Secretary within 30 days of the date on which such notice is transmitted; and

''(II) include and prominently display, until such time as the Secretary receives the information described in paragraph (1)(B), as part of the record of such trial in the database described in subsection (i), a notice stating that the results of such trials have not been reported as required by law.

''(F) FAILURE TO COMPLY WITH NOTICE.—If by the date that is 30 days after the date on which the notice described in subparagraph (E)(ii)(I) is transmitted, the Secretary has not received from the principal investigator involved the information required pursuant to such notice, the Secretary may not award a grant, contract, cooperative agreement, or any other award to such principal investigator until such principal investigator submits to the Secretary the information required pursuant to such notice.

''(G) RULE OF CONSTRUCTION.—For purposes of this paragraph, limitations on the awarding of grants, contracts, cooperative agreements, or any other awards to principal investigators for violations of this paragraph shall not be construed to include any funding that supports the clinical trial involved.

''(4) RULE OF CONSTRUCTION.—Nothing in this subsection shall be construed to prevent an investigator other than the investigator described in paragraph (3)(F) from receiving an ongoing award, contract, or cooperative agreement.

''(5) INCLUSION IN REGISTRY.—

''(A) GENERAL RULE.—The Secretary shall, pursuant to subsection (i)(5), include—

''(i) the data described in subsection (i)(3)(A) and submitted under the amendments made by section 4(a) of the FACT Act in the registry described in subsection (i) as soon as practicable after receiving such data; and

''(ii) the data described in clause (I) of subsection (i)(3)(B)(iv) and submitted under this subsection or the amendments made by section 4(a) of the FACT Act in the database described in subsection (i) as soon as practicable after receiving such data.

''(B) OTHER DATA.—

''(i) IN GENERAL.—The Secretary shall, pursuant to subsection (i)(5), include the data described in subclauses (II) through (X) of subsection (i)(3)(B)(iv) and submitted under this section in the database described in subsection (i)—

''(I) as soon as practicable after receiving such data; or

''(II) in the case of data to which clause (ii) applies, by the date described in clause (iii).

''(ii) DATA DESCRIBED.—This clause applies to data described in clause (i) if—

''(I) the principal investigator involved requests a delay in the inclusion in the database of such data in order to have such data published in a peer reviewed journal; and

''(II) the Secretary determines that an attempt will be made to seek such publication.

''(iii) DATE FOR INCLUSION IN REGISTRY.—Subject to clause (iv), the date described in this clause is the earlier of—

''(I) the date on which the data involved is published as provided for in clause (ii); or

''(II) the date that is 18 months after the date on which such data is submitted to the Secretary.

''(iv) EXTENSION OF DATE.—The Secretary may extend the 18-month period described in clause (iii)(II) for an additional 6 months if the principal investigator demonstrates to the Secretary, prior to the expiration of such 18-month period, that the data involved has been accepted for publication by a journal described in clause (ii)(I).

''(v) MODIFICATION OF DATA.—Prior to including data in the database under clause (ii) or (iv), the Secretary shall permit the principal investigator to modify the data involved.

''(6) MEMORANDUM OF UNDERSTANDING.—Not later than 6 months after the date of enactment of the FACT Act, the Secretary shall seek a memorandum of understanding with the heads of all other Federal agencies that conduct clinical trials to include in the registry and the database clinical trials sponsored by such agencies that meet the requirements of this subsection.

''(7) APPLICATION TO CERTAIN PERSONS.—The provisions of this subsection shall apply to a responsible person described in subsections (n)(1)(A)(ii)(II) or (n)(1)(B)(i)(II).

''(k) TRIALS WITH NON-FEDERAL SUPPORT.—

''(1) IN GENERAL.—The responsible person for a clinical trial described in subsection (i)(3)(B) shall, not later than the date specified in paragraph (3), submit to the Secretary—

''(A) the information described in subclauses (II) through (X) of subsection (i)(3)(B)(iv), and with respect to clinical trials in progress on the date of enactment of the FACT Act, the information described in subclause (I) of subsection (i)(3)(B)(iv); or

''(B) a statement containing information sufficient to demonstrate to the Secretary that the information described in subparagraph (A) cannot reasonably be submitted, along with an estimated date of submission of the information described in such subparagraph.

''(2) SANCTION IN CASE OF NONCOMPLIANCE.—

''(A) INITIAL NONCOMPLIANCE.—If by the date specified in paragraph (3), the Secretary has not received the information or statement required to be submitted to the Secretary under paragraph (1), the Secretary shall—

''(i) transmit to the responsible person for such trial a notice stating that such responsible person shall be liable for the civil monetary penalties described in subparagraph (B) if the required information or statement is not submitted to the Secretary within 30 days of the date on which such notice is transmitted; and

''(ii) include and prominently display, until such time as the Secretary receives the information described in paragraph (1), as part of the record of such trial in the database described in subsection (i), a notice stating that the results of such trials have not been reported as required by law.

''(B) CIVIL MONETARY PENALTIES FOR NONCOMPLIANCE.—

''(i) IN GENERAL.—If by the date that is 30 days after the date on which a notice described in subparagraph (A) is transmitted, the Secretary has not received from the responsible person involved the information or statement required pursuant to such notice, the Secretary shall, after providing the opportunity for a hearing, order such responsible person to pay a civil penalty of $10,000 for each day after such date that the information or statement is not submitted.

''(ii) WAIVERS.—In any case in which a responsible person described in clause (i) is a nonprofit entity, the Secretary may waive or reduce the penalties applicable under such clause to such person.

''(C) SUBMISSION OF STATEMENT BUT NOT INFORMATION.—

''(i) IN GENERAL.—If by the date specified in paragraph (3), the Secretary has received a statement described in paragraph (1)(B) but not the information described in paragraph (1)(A) the Secretary shall transmit to the responsible person involved a notice stating that such responsible person shall submit such information by the date determined by the Secretary in consultation with such responsible person.

''(ii) FAILURE TO COMPLY.—If, by the date specified by the Secretary in the notice under clause (i), the Secretary has not received the information described in paragraph (1)(A), the Secretary shall—

''(I) transmit to the responsible person involved a notice specifying the information required to be submitted to the Secretary and stating that such responsible person shall be liable for the civil monetary penalties described in subparagraph (D) if such information is not submitted to the Secretary within 30 days of the date on which such notice is transmitted; and

''(II) include and prominently display, until such time as the Secretary receives the information described in paragraph (1)(A), as part of the record of such trial in the database described in subsection (i), a notice stating that the results of such trials have not been reported as required by law.

''(D) NONCOMPLIANCE.—

''(i) IN GENERAL.—If by the date that is 30 days after the date on which a notice described in subparagraph (C)(ii)(I) is transmitted, the Secretary has not received from the responsible person involved the information required pursuant to such notice, the Secretary, after providing the opportunity for a hearing, shall order such responsible person to pay a civil penalty of $10,000 for each day after such date that the information is not submitted.

''(ii) WAIVERS.—In any case in which a responsible person described in clause (i) is a nonprofit entity, the Secretary may waive or reduce the penalties applicable under such clause to such person.

''(E) NOTICE OF PUBLICATION OF DATA.—If the responsible person is the manufacturer or distributor of the drug, biological product, or device involved, the notice under subparagraphs (A)(i) and (C)(ii)(I) shall include a notice that the Secretary shall publish the data described in subsection (i)(3)(B) in the database if the responsible person has not submitted the information specified in the notice transmitted by the date that is 6 months after the date of such notice.

''(F) PUBLICATION OF DATA.—Notwithstanding section 301(j) of the Federal Food, Drug, and Cosmetic Act, section 1905 of title 18, United States Code, or any other provision of law, if the responsible person is the manufacturer or distributor of the drug, biological product, or device involved, and if the responsible person has not submitted to the Secretary the information specified in a notice transmitted pursuant to subparagraph (A)(i) or (C)(ii)(I) by the date that is 6 months after the date of such notice, the Secretary shall publish in the registry information that—

''(i) is described in subsection (i)(3)(B); and

''(ii) the responsible person has submitted to the Secretary in any application, including a supplemental application, for the drug or device under section 505, 510, 515, or 520 of the Federal Food, Drug, and Cosmetic Act or for the biological product under section 351.

''(3) DATE SPECIFIED.—The date specified in this paragraph shall be the date that is 1 year from the earlier of—

''(A) the estimated completion date of the trial, submitted under subsection (i)(3)(B)(vi)(I)(ii); or

''(B) the actual date of completion or termination of the trial.

''(4) USE OF FUNDS.—

''(A) IN GENERAL.—The Secretary shall deposit the funds collected under paragraph (2) into an account and use such funds, in consultation with the Director of the Agency for Healthcare Research and Quality, to fund studies that compare the clinical effectiveness of 2 or more treatments for similar diseases or conditions.

''(B) FUNDING DECISIONS.—The Secretary shall award funding under subparagraph (A) based on a priority list established not later than 6 months after the date of enactment of the FACT Act by the Director of the Agency for Healthcare Research and Quality and periodically updated as determined appropriate by the Director.

''(5) INCLUSION IN REGISTRY.—

''(A) GENERAL RULE.—The Secretary shall, pursuant to subsection (i)(5), include—

''(i) the data described in subsection (i)(3)(A) and submitted under the amendments made by section 4(a) of the FACT Act in the registry described in subsection (i) as soon as practicable after receiving such data; and

''(ii) the data described in clause (I) of subsection (i)(3)(B)(iv) and submitted under this subsection in the database described in subsection (i) as soon as practicable after receiving such data.

''(B) OTHER DATA.—

''(i) IN GENERAL.—The Secretary shall, pursuant to subsection (i)(5), include the data described in subclauses (II) through (X) of subsection (i)(3)(B)(iv) and submitted under this section in the database described in subsection (i)—

''(I) as soon as practicable after receiving such data; or

''(II) in the case of data to which clause (ii) applies, by the date described in clause (iii).

''(ii) DATA DESCRIBED.—This clause applies to data described in clause (i) if—

''(I) the responsible person involved requests a delay in the inclusion in the database of such data in order to have such data published in a peer reviewed journal; and

''(II) the Secretary determines that an attempt will be made to seek such publication.

''(iii) DATE FOR INCLUSION IN REGISTRY.—Subject to clause (iv), the date described in this clause is the earlier of—

''(I) the date on which the data involved is published as provided for in clause (ii); or

''(II) the date that is 18 months after the date on which such data is submitted to the Secretary.

''(iv) EXTENSION OF DATE.—The Secretary may extend the 18-month period described in clause (iii)(II) for an additional 6 months if the responsible person demonstrates to the Secretary, prior to the expiration of such 18-month period, that the data involved has been accepted for publication by a journal described in clause (ii)(I).

''(v) MODIFICATION OF DATA.—Prior to including data in the database under clause (ii) or (iv), the Secretary shall permit the responsible person to modify the data involved.

''(6) EFFECT.—The information with respect to a clinical trial submitted to the Secretary under this subsection, including data published by the Secretary pursuant to paragraph (2)(F), may not be submitted by a person other than the responsible person as part of, or referred to in, an application for approval of a drug or device under section 505, 510, 515, or 520 of the Federal Food, Drug, and Cosmetic Act or of a biological product under section 351, unless the information is available from a source other than the registry or database described in subsection (i).

''(l) PROCEDURES AND WAIVERS.—

''(1) SUBMISSION PRIOR TO NOTICE.—Nothing in subsections (j) through (k) shall be construed to prevent a principal investigator or a responsible person from submitting any information required under this subsection to the Secretary prior to receiving any notice described in such subsections.

''(2) ONGOING TRIALS.—A factually accurate statement that a clinical trial is ongoing shall be deemed to be information sufficient to demonstrate to the Secretary that the information described in subsections (j)(1)(A) and (k)(1)(A) cannot reasonably be submitted.

''(3) INFORMATION PREVIOUSLY SUBMITTED.—Nothing in subsections (j) through (k) shall be construed to require the Secretary to send a notice to any principal investigator or responsible person requiring the submission to the Secretary of information that has already been submitted.

''(4) SUBMISSION FORMAT AND TECHNICAL STANDARDS.—

''(A) IN GENERAL.—The Secretary shall, to the extent practicable, accept submissions required under this subsection in an electronic format and shall establish interoperable technical standards for such submissions.

''(B) CONSISTENCY OF STANDARDS.—To the extent practicable, the standards established under subparagraph (A) shall be consistent with standards adopted by the Consolidated Health Informatics Initiative (or a successor organization to such Initiative) to the extent such Initiative (or successor) is in operation.

''(5) TRIALS COMPLETED PRIOR TO ENACTMENT.—The Secretary shall establish procedures and mechanisms to allow for the voluntary submission to the database of the information described in subsection (i)(3)(B) with respect to clinical trials completed prior to the date of enactment of the FACT Act. In cases in which it is in the interest of public health, the Secretary may require that information from such trials be submitted to the database. To the extent practicable, submissions to the database shall comply with paragraph (4). Failure to comply with a requirement to submit information to the database under this paragraph shall be deemed to be a failure to submit information as required under this section, and the appropriate remedies and sanctions under this section shall apply.

''(6) TRIALS NOT INVOLVING DRUGS, BIOLOGICAL PRODUCTS, OR DEVICES.—The Secretary shall establish procedures and mechanisms to allow for the voluntary submission to the database of the information described in subsection (i)(3)(B) with respect to clinical trials that do not involve drugs, biological products, or devices. In cases in which it is in the interest of public health, the Secretary may require that information from such trials be submitted to the database. Failure to comply with such a requirement shall be deemed to be a failure to submit information as required under this section, and the appropriate remedies and sanctions under this section shall apply.

''(7) SUBMISSION OF INACCURATE INFORMATION.—

''(A) IN GENERAL.—If the Secretary determines that information submitted by a principal investigator or a responsible person under this section is factually and substantively inaccurate, the Secretary shall submit a notice to the investigator or responsible person concerning such inaccuracy that includes—

''(i) a summary of the inaccuracies involved; and

''(ii) a request for corrected information within 30 days.

''(B) AUDIT OF INFORMATION.—

''(i) IN GENERAL.—The Secretary may conduct audits of any information submitted under subsection (i).

''(ii) REQUIREMENT.—Any principal investigator or responsible person that has submitted information under subsection (i) shall permit the Secretary to conduct the audit described in clause (i).

''(C) CHANGES TO INFORMATION.—Any change in the information submitted by a principal investigator or a responsible person under this section shall be reported to the Secretary within 30 days of the date on which such investigator or person became aware of the change for purposes of updating the registry or the database.

''(D) FAILURE TO CORRECT.—If a principal investigator or a responsible person fails to permit an audit under subparagraph (B), provide corrected information pursuant to a notice under subparagraph (A), or provide changed information under subparagraph (C), the investigator or responsible person involved shall be deemed to have failed to submit information as required under this section and the appropriate remedies and sanction under this section shall apply.

''(E) CORRECTIONS.—

''(i) IN GENERAL.—The Secretary may correct, through any means deemed appropriate by the Secretary to protect public health, any information included in the registry or the database described in subsection (i) (including information described or contained in a publication referred to under subclause (VI) of subsection (i)(3)(B)(iv)) that is—

''(I) submitted to the Secretary for inclusion in the registry or the database; and

''(II) factually and substantively inaccurate or false or misleading.

''(ii) RELIANCE ON INFORMATION.—The Secretary may rely on any information from a clinical trial or a report of an adverse event acquired or produced under the authority of section 351 of this Act or of the Federal Food, Drug, and Cosmetic Act in determining whether to make corrections as provided for in clause (i).

''(iii) DETERMINATIONS RELATING TO MISLEADING INFORMATION.—For purposes of clause (i)(II), in determining whether information is misleading, the Secretary shall use the standard described in section 201(n) of the Federal Food, Drug, and Cosmetic Act that is used to determine whether labeling or advertising is misleading.

''(iv) RULE OF CONSTRUCTION.—This subparagraph shall not be construed to authorize the disclosure of information if—

''(I) such disclosure would constitute an invasion of personal privacy;

''(II) such information concerns a method or process which as a trade secret is entitled to protection within the meaning of section 301(j) of the Federal Food, Drug, and Cosmetic Act;

''(III) such disclosure would disclose confidential commercial information or a trade secret, other than a trade secret described in subclause (II), unless such disclosure is necessary—

''(aa) to make a correction as provided for under clause (i); and

''(bb) protect the public health; or

''(IV) such disclosure relates to a biological product for which no license is in effect under section 351, a drug for which no approved application is in effect under section 505(c) of the Federal Food, Drug, and Cosmetic Act, or a device that is not cleared under section 510(k) of such Act or for which no application is in effect under section 515 of such Act.

''(v) NOTICE.—In the case of a disclosure under clause (iv)(III), the Secretary shall notify the manufacturer or distributor of the drug, biological product, or device involved—

''(I) at least 30 days prior to such disclosure; or

''(II) if immediate disclosure is necessary to protect the public health, concurrently with such disclosure.

''(8) WAIVERS REGARDING CLINICAL TRIAL RESULTS.—The Secretary may waive the requirements of subsections (j)(1) and (k)(1) that the results of clinical trials be submitted to the Secretary, upon a written request from the responsible person if the Secretary determines that extraordinary circumstances justify the waiver and that providing the waiver is in the public interest, consistent with the protection of public health, or in the interest of national security. Not later than 30 days after any part of a waiver is granted, the Secretary shall notify, in writing, the appropriate committees of Congress of the waiver and provide an explanation for why the waiver was granted.

''(m) TRIALS CONDUCTED OUTSIDE OF THE UNITED STATES.—

''(1) IN GENERAL.—With respect to clinical trials described in paragraph (2), the responsible person shall submit to the Secretary the information required under subclauses (II) through (X) of subsection (i)(3)(B)(iv). The Secretary shall ensure that the information described in the preceding sentence is made available in the database under subsection (i) in a timely manner. Submissions to the database shall comply with subsection (l)(4) to the extent practicable. The Secretary shall include the information described in the preceding sentence in the database under subsection (i) as soon as practicable after receiving such information. Failure to comply with this paragraph shall be deemed to be a failure to submit information as required under this section, and the appropriate remedies and sanctions under this section shall apply.

''(2) CLINICAL TRIAL DESCRIBED.—A clinical trial is described in this paragraph if—

''(A) such trial is conducted outside of the United States; and

''(B) the data from such trial is—

''(i) submitted to the Secretary as part of an application, including a supplemental application, for a drug or device under section 505, 510, 515, or 520 of the Federal Food, Drug, and Cosmetic Act or for the biological product under section 351; or

''(ii) used in advertising or labeling to make a claim about the drug, device, or biological product involved.

''(n) DEFINITIONS; INDIVIDUAL LIABILITY.—

''(1) RESPONSIBLE PERSON.—

''(A) IN GENERAL.—In this section, the term 'responsible person' with respect to a clinical trial, means—

''(i) if such clinical trial is the subject of an investigational new drug application or an application for an investigational device exemption, the sponsor of such investigational new drug application or such application for an investigational device exemption; or

''(ii) except as provided in subparagraph (B), if such clinical trial is not the subject of an investigational new drug application or an application for an investigational device exemption—

''(I) the person that provides the largest share of the monetary support (such term does not include in-kind support) for the conduct of such trial; or

''(II) in the case in which the person described in subclause (I) is a Federal or State agency, the principal investigator of such trial.

''(B) NONPROFIT ENTITIES AND REQUESTING PERSONS.—

''(i) NONPROFIT ENTITIES.—For purposes of subparagraph (A)(ii)(I), if the person that provides the largest share of the monetary support for the conduct of the clinical trial involved is a nonprofit entity, the responsible person for purposes of this section shall be—

''(I) the nonprofit entity; or

''(II) if the nonprofit entity and the principal investigator of such trial jointly certify to the Secretary that the principal investigator will be responsible for submitting the information described in subsection (i)(3)(B) for such trial, the principal investigator.

''(ii) REQUESTING PERSONS.—For purposes of subparagraph (A)(ii)(I), if a person—

''(I) has submitted a request to the Secretary that the Secretary recognize the person as the responsible person for purposes of this section; and

''(II) the Secretary determines that such person—

''(aa) provides monetary support for the conduct of such trial;

''(bb) is responsible for the conduct of such trial; and

''(cc) will be responsible for submitting the information described in subsection (i)(3)(B) for such trial;

such person shall be the responsible person for purposes of this section.

''(2) DRUG, DEVICE, BIOLOGICAL PRODUCT.—In this section—

''(A) the terms 'drug' and 'device' have the meanings given such terms in section 201 of the Federal Food, Drug, and Cosmetic Act; and

''(B) the term 'biological product' has the meaning given such term in section 351 of this Act.

''(3) INDIVIDUAL LIABILITY.—

''(A) LIMITATION ON LIABILITY OF INDIVIDUALS.—No individual shall be liable for any civil monetary penalty under this section.

''(B) INDIVIDUALS WHO ARE RESPONSIBLE PERSONS.—If a responsible person under subparagraph (A) or (B) of paragraph (1) is an individual, such individual shall be subject to the procedures and conditions described in subsection (j).''.

(c) AUTHORIZATION OF APPROPRIATIONS.—Section 402 of the Public Health Service Act (42 U.S.C. 282), as amended by this section, is further amended by adding at the end the following:

''(q) AUTHORIZATION OF APPROPRIATIONS.—There are authorized to be appropriated such sums as may be necessary to carry out this section.''.

(d) CONFORMING AMENDMENT.—Section 402(c)(1)(D) of the Public Health Service Act (42 U.S.C. 282(c)(1)(D)), as amended by Public Law 109-482, is amended by striking ''402(k)'' and inserting ''402(p)''.

SEC. 4. REVIEW AND APPROVAL OF PROPOSALS FOR RESEARCH.

(a) AMENDMENTS.—Section 492A(a) of the Public Health Service Act (42 U.S.C. 289a–1(a)) is amended—

(1) in paragraph (1)(A), by striking ''unless'' and all that follows through the period and inserting the following: ''unless—

''(i) the application has undergone review in accordance with such section and has been recommended for approval by a majority of the members of the Board conducting the review;

''(ii) such Board has submitted to the Secretary a notification of such approval; and

''(iii) with respect to an application involving a clinical trial to which section 402(i) applies, the principal investigator who has submitted such application has submitted to the Secretary for inclusion in the registry and the database described in section 402(i) the information described in paragraph (3)(A) and subclause (I) of paragraph (3)(B)(iv) of such section.''; and

(2) by adding at the end the following:

''(3) COST RECOVERY.—Nonprofit entities may recover the full costs associated with compliance with the requirements of paragraph (1) from the Secretary as a direct cost of research.''.

(b) REGULATIONS.—The Secretary of Health and Human Services shall modify the regulations promulgated at part 46 of title 45, Code of Federal Regulations, part 50 of title 21, Code of Federal Regulations, and part 56 of title 21, Code of Federal Regulations, to reflect the amendments made by subsection (a).

(c) CONFORMING AMENDMENT.—Section 492A(a)(2) of the Public Health Service Act (42 U.S.C. 289a–1(a)(2)), as amended by Public Law 109-482, is amended by striking ''402(k)'' and inserting ''402(p)''.

SEC. 5. PROHIBITED ACTS.

Section 301 of the Federal Food, Drug, and Cosmetic Act (21 U.S.C. 331) is amended by adding at the end the following:

''(ii)(1) The entering into of a contract or other agreement by a responsible person or a manufacturer of a drug, biological product, or device with an individual who is not an employee of such responsible person or manufacturer, or the performance of any other act by such a responsible person or manufacturer, that prohibits, limits, or imposes unreasonable delays on the ability of such individual to—

''(A) discuss the results of a clinical trial at a scientific meeting or any other public or private forum; or

''(B) publish the results of a clinical trial or a description or discussion of the results of a clinical trial in a scientific journal or any other publication.

''(2) The entering into a contract or other agreement by a responsible person or a manufacturer of a drug, biological product, or device with an academic institution or a health care facility, or the performance of any other act by such a responsible person or manufacturer, that prohibits, limits, or imposes unreasonable delays on the ability of an individual who is not an employee of such responsible person or manufacturer to—

''(A) discuss the results of a clinical trial at a scientific meeting or any other public or private forum; or

''(B) publish the results of a clinical trial or a description or discussion of the results of a clinical trial in a scientific journal or any other publication.''.

SEC. 6. REPORTS.

(a) IMPLEMENTATION REPORT.—Not later than 1 year after the date of enactment of this Act, the Secretary of Health and Human Services shall submit to the appropriate committees of Congress a report on the status of the implementation of the requirements of the amendments made by section 3 that includes a description of the number and types of clinical trials for which information has been submitted under such amendments.

(b) DATA COLLECTION.—

(1) IN GENERAL.—The Secretary of Health and Human Services shall enter into a contract with the Institute of Medicine for the conduct of a study concerning the extent to which data submitted to the registry under section 402(i) of the Public Health Service Act (42 U.S.C. 282(i)) has impacted the public health.

(2) REPORT.—Not later than 6 months after the date on which a contract is entered into under paragraph (1), the Institute of Medicine shall submit to the Secretary of Health and Human Services a report on the results of the study conducted under such paragraph. Such report shall include recommendations for changes to the registry, the database, and the data submission requirements that would benefit the public health.

Mr. GRASSLEY. Madam President, I am pleased to have bipartisan sponsorship of two very important bills with Senator DODD of Connecticut that are being introduced today, the Food and Drug Administration Safety Act of 2007 and the Fair Access to Clinical Trials Act of 2007.

These bills are part of a sustained effort to restore public confidence in the Federal Government's food and drug safety program and to make sure the agency does all it can to protect the public.

Enactment of those two bills would provide doctors and patients with more information about the risks and benefits of their medicines and bring about greater transparency and accountability of the Food and Drug Administration.

I am sure my colleagues realize I have been involved in oversight of the Food and Drug Administration for now at least 3 years, and it has been in response to concerns about the reluctance of the Food and Drug Administration to provide information to the public about the increased suicide risks for young people taking antidepressants.

In November 2004, I chaired a groundbreaking hearing on drug safety involving the Food and Drug Administration and the drug Vioxx. That hearing and other critical drug safety concerns that have come to light since then highlight the need for comprehensive and systematic reforms as well as more stringent oversight of the Food and Drug Administration.

Over the past 3 years, it has become increasingly apparent that the Food and Drug Administration has repeatedly failed to protect the public from an industry that focuses all too often on profits, even when those profits come at the expense of ''John Q. Public.''

In 2005, then, and because of this, Senator DODD and I introduced almost identical companion bills to advance serious reforms at the Food and Drug Administration. In the 2 years following the introduction of those bills, however, the Food and Drug Administration failed to take comprehensive and systematic steps toward restoring public confidence in that agency, as well as the necessity of strengthening public safety.

Yesterday, the Food and Drug Administration released its response to the Institute of Medicine's 2006 report on drug safety. The two safety bills introduced today are not intended to supplant the plans articulated in the Food and Drug Administration's response but, rather, to augment those plans and to provide the FDA with additional enforcement tools, something they now lack.

In fact, one of our bills is intended to specifically address a serious problem that was also identified by the Institute of Medicine. Dr. Alta Charo, a member of the Institute of Medicine committee that wrote the report on drug safety, stated in the newspaper USA Today:

I have to confess I'm disappointed that they—

Meaning the FDA—

ignored one of our most critical recommendations.

According to the USA Today article, she was referring to the Institute of Medicine's recommendation that the Food and Drug Administration give more clout to the office that monitors drugs after they go to market. I want you to know I agree with Dr. Charo.

The Food and Drug Administration Safety Act of 2007 would then establish an independent center within the Food and Drug Administration. The name of the center would be the Center for Postmarket Evaluation and Research for Drugs and Biologics. The director of this center would report directly to the Food and Drug Administration Commissioner and would be responsible for conducting risk assessments for approved drugs and biological products.

The new center would also be responsible for ensuring the safety and effectiveness of drugs once they are on the market. Unfortunately, the problem we are trying to solve is that now at the FDA, the office that reviews drug safety postmarketing is a mere consultant and under the thumb of the office that puts the drugs on the market in the first place.

Even more troubling is the fact that those who speak out of line are targeted. Whistleblowers, as we call them, are targeted. They are very helpful to Congress in ferreting out wrongdoing, that laws are not being faithfully executed, that money is not being spent according to congressional intent. So they speak out at the FDA and point out a lot of things that are wrong. And what do they get for it? They are treated like a skunk at a picnic. They are targeted.

So this legislation we put before us would provide the new center with the independence and authority to promptly identify serious safety risks and take necessary actions to protect the public, and I hope eliminate some of the intimidation against whistleblowers.

At the same time, the intra-agency communication is essential in addressing drug safety. So this legislation would encourage communication between the center and other centers and offices, or let's say subagencies at the Food and Drug Administration that handle drugs and biological products, to do what is best for the consumer and not have big PhRMA having undue influence.

The second bill we are introducing would expand an existing Web site, www.clinicaltrials.gov, to create a publicly accessible national databank of clinical trial information. The databank would be comprised of a clinical trial registry and a clinical trial results database of all publicly and privately funded clinical trials so that everything is out there for the public to consider, not letting somebody choose: Well, if this is a little negative toward our drug, we will not make that public. All the positive stuff, of course, we will make public.

So I think this legislation is going to foster transparency. But it is going to bring about a great deal of accountability in health research and development and ensure that the scientific community and, most importantly, the general public whom we are trying to protect have access to basic information about clinical trials, about new drugs going out on the market.

The legislation would also create an environment that would encourage companies from withholding clinically important information about their products from the Food and Drug Administration and from the public.

By the way, the information that is coming out now about Vioxx in the newspapers today will even tell you that a long time before Vioxx went on the market there were scientists within the company who were raising questions about whether it was going to cause harm to the heart. All of this information should be out there. The public ought to know it. Your doctor ought to know it. Transparency and accountability should not hurt anybody in an open society such as we have in

America. Oh, there might be some legitimate reasons for intellectual property privacy, but nothing beyond that.

If we have learned anything over the last few years, it is that the Food and Drug Administration is a troubled agency that lost sight of its fundamental function. That fundamental function is to protect the safety and the efficacy of new prescription drugs.

Two very important things for them to answer: Are the drugs safe for you? Are they effective?

Unfortunately, the public has good reason to doubt the Food and Drug Administration's ability to do its job. And experts from all over the country have expressed concern. These two bills, then, that Senator DODD and I are introducing—and let me parenthetically say for the public, people are always thinking that Democrats are hitting on Republicans and Republicans are hitting on Democrats. There is a lot going on around here you never see on evening television that is bipartisan because there is not controversy about it, or at least there is no controversy between Republicans and Democrats. But what they want to put in the news media every night is when some Republican is fighting some Democrat. So our constituents get a view about this Congress that is very distorted.

I would like to have people read on a regular basis about how Senator BAUCUS and I meet on a regular basis to determine the agenda for the Finance Committee. I would like to have them read about how he and I have put out bipartisan bills for the last 6 years—whether he was chairman or I was chairman—and that every one of them got to the President to be signed. But you do not hear those things.

So I want to emphasize, this is a DODD—and Senator DODD is a Democrat from Connecticut—and a GRASSLEY bill—and GRASSLEY is a Republican Senator from Iowa. So this bill is being introduced to ensure the safety and efficacy of new prescription drugs, not to do something new for the FDA, just to give them the tools to do what they have had a responsibility to do for several decades.

So the public has doubts about the FDA's ability to do it. These two bills will help put the FDA back on the path to fulfilling its mission and, most importantly, put the American consumer first.

So, Madam President, in closing, I ask unanimous consent that my statement in the RECORD that I give today be coupled with the statement of Senator DODD, which will be given later today, regarding the introduction of these important bills.

By giving me this unanimous consent, it will assure the public, when they read about these bills, knows that DODD is a Democrat, GRASSLEY is a Republican, and they are bipartisan bills.

The PRESIDING OFFICER. Without objection, it is so ordered.

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

S. 468

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 ''Food and Drug Administration Safety Act of 2007''.

SEC. 2. CENTER FOR POSTMARKET EVALUATION AND RESEARCH FOR DRUGS AND BIOLOGICS.

(a) IN GENERAL.—Chapter V of the Federal Food, Drug, and Cosmetic Act (21 U.S.C. 351 et seq.) is amended by inserting after section 506C the following:

''SEC. 507. DRUG SAFETY.

''(a) ESTABLISHMENT OF THE CENTER FOR POSTMARKET EVALUATION AND RESEARCH FOR DRUGS AND BIOLOGICS.—There is established within the Food and Drug Administration a Center for Postmarket Evaluation and Research for Drugs and Biologics (referred to in the section as the 'Center'). The Director of the Center shall report directly to the Commissioner of Food and Drugs.

''(b) DUTIES OF THE CENTER FOR POSTMARKET EVALUATION AND RESEARCH FOR DRUGS AND BIOLOGICS.—

''(1) RESPONSIBILITIES OF DIRECTOR.—The Director of the Center, in consultation with the Director of the Center for Drug Evaluation and Research or the Director of the Center for Biologics Evaluation and Research, as appropriate, shall—

''(A) conduct postmarket risk assessment of drugs approved under section 505 of this Act and of biological products licensed under section 351 of the Public Health Service Act;

''(B) conduct and improve postmarket surveillance of approved drugs and licensed biological products using postmarket surveillance programs and activities (including MedWatch), risk-benefit analyses, adverse event reports, the scientific literature, any clinical or observational studies (including studies required under subsection (d) or (e)), and any other resources that the Director of the Center determines appropriate;

''(C) determine whether a study is required under subsection (d) or (e) and consult with the sponsors of drugs and biological products to ensure that such studies are completed by the date, and according to the terms, specified by the Director of the Center;

''(D) contract, or require the sponsor of an application or the holder of an approved application or license to contract, with the holders of domestic and international patient databases to conduct epidemiologic and other observational studies;

''(E) determine, based on postmarket surveillance programs and activities (including MedWatch), risk-benefit analyses, adverse event reports, the scientific literature, and any clinical or observational studies (including studies required under subsection (d) or (e)), and any other resources that the Director of the Center determines appropriate, whether a drug or biological product may present an unreasonable risk to the health of patients or the general public, and take corrective action if such an unreasonable risk may exist;

''(F) make information about the safety and effectiveness of approved drugs and licensed biological products available to the public and healthcare providers in a timely manner; and

''(G) conduct other activities as the Director of the Center determines appropriate to ensure the safety and effectiveness of all drugs approved under section 505 and all biological products licensed under section 351 of the Public Health Service Act.

''(2) DETERMINATION OF UNREASONABLE RISK.—In determining whether a drug or biological product may present an unreasonable risk to the health of patients or the general public, the Director of the Center, in consultation with the Director of the Center for Drug Evaluation and Research or the Director of the Center for Biologics Evaluation and Research, as appropriate, shall consider the risk in relation to the known benefits of such drug or biological product.

''(c) SECRETARIAL AUTHORITY.—

''(1) IN GENERAL.—Approval of a drug under section 505 of this Act or issuance of a license for a biological product under section 351 of the Public Health Service Act may be subject to the requirement that the sponsor conduct 1 or more postmarket studies as described in subsection (d) or (e) of this section, or other postmarket studies as required by the Secretary, to validate the safety and effectiveness of the drug or biological product.

''(2) DEFINITION.—For purposes of this section, the term 'postmarket' means—

''(A) with respect to a drug, after approval of an application under section 505; and

''(B) with respect to a biological product, after licensure under section 351 of the Public Health Service Act.

''(d) PREAPPROVAL REVIEW.—

''(1) REVIEW OF APPLICATION.—

''(A) IN GENERAL.—

''(i) REVIEW.—At any time before a drug is approved under section 505 of this Act or a biological product is licensed under section 351 of the Public Health Service Act, the Director of the Center shall review the application (or supplement to the application), and any analyses associated with the application, of such drug or biological product.

''(ii) EFFECT OF APPROVAL OR LICENSURE.—The approval of a drug under section 505 or the licensure of a biological product under such section 351 shall not affect the continuation and completion of a review under clause (i).

''(B) LIMITATION.—In no case shall the review under subparagraph (A) delay a decision with respect to an application for a drug under section 505 of this Act or for a biological product under section 351 of the Public Health Service Act.

''(2) RESULT OF REVIEW.—The Director of the Center may, based on the review under paragraph (1)—

''(A) require that the sponsor of the application agree to conduct 1 or more postmarket studies to determine the safety or effectiveness of a drug or biological product, including such safety or effectiveness as compared to other drugs or biological products, to be completed by a date, and according to the terms, specified by the Director of the Center; or

''(B) contract, or require the sponsor of the application to contract, with a holder of a domestic or an international patient database to conduct 1 or more epidemiologic or other observational studies.

''(e) POSTMARKETING STUDIES OF DRUG SAFETY.—

''(1) IN GENERAL.—At any time after a drug is approved under section 505 of this Act or a biological product is licensed under section 351 of the Public Health Service Act, the Director of the Center, may—

''(A) require that the holder of an approved application or license conduct 1 or more studies to determine the safety or effectiveness of such drug or biological product, including such safety and effectiveness as compared to other drugs or biological products, to be completed by a date, and according to the terms, specified by such Director; or

''(B) contract, or require the holder of the approved application or license to contract, with a holder of a domestic or an international patient database to conduct 1 or more epidemiologic or other observational studies.

''(2) REVIEW OF OUTSTANDING STUDIES.—Not later than 90 days after the date of enactment of the Food and Drug Administration Safety Act of 2007, the Director of the Center shall—

''(A) review and publish a list in the Federal Register of any postmarketing studies outstanding on the date of enactment of the Food and Drug Administration Safety Act of 2007; and

''(B) as the Director determines appropriate, require the sponsor of a study described in subparagraph (A) to conduct such study under this subsection.

''(f) PUBLICATION OF PROGRESS REPORTS AND COMPLETED STUDIES.—

''(1) IN GENERAL.—The Director of the Center shall require that the sponsor of a study under subsection (d) or (e) submit to the Secretary—

''(A) not less frequently than every 90 days, an up-to-date report describing the progress of such study; and

''(B) upon the completion date of such study, the results of such study.

''(2) COMPLETION DATE.—For purposes of this section, the completion date of such study shall be determined by the Director of the Center.

''(g) DETERMINATIONS BY DIRECTOR.—

''(1) RESULTS OF STUDY.—The Director of the Center shall determine, upon receipt of the results of a study required under subsection (d) or (e)—

''(A) whether the drug or biological product studied may present an unreasonable risk to the health of patients or the general public; and

''(B) what, if any, corrective action under subsection (k) shall be taken to protect patients and the public health.

''(2) RESULTS OF EVIDENCE.—The Director of the Center may, at any time, based on the empirical evidence from postmarket surveillance programs and activities (including MedWatch), risk-benefit analyses, adverse event reports, the scientific literature, any clinical or observational studies (including studies required under subsection (d) or (e)), or any other resources that the Director of the Center determines appropriate—

''(A) make a determination that a drug or biological product may present an unreasonable risk to the health of patients or the general public; and

''(B) order a corrective action under subsection (k) be taken to protect patients and the public health.

''(3) REQUIRED CONSULTATION AND CONSIDERATIONS.—Before making a determination under paragraph (2), ordering a study under subsection (d) or (e), or taking a corrective action under subsection (k), the Director of the Center shall—

''(A) consult with the Director of the Center for Drug Evaluation and Research or the Director of the Center for Biologics Evaluation and Research, as appropriate; and

''(B) consider—

''(i) the benefit-to-risk profile of the drug or biological product;

''(ii) the effect that a corrective action, or failure to take corrective action, will have on the patient population that relies on the drug or biological product; and

''(iii) the extent to which the drug or biological product presents a meaningful therapeutic benefit as compared to other available treatments.

''(h) PUBLIC INFORMATION.—Periodically, but not less often than every 90 days, the Secretary shall make available to the public, by publication in the Federal Register and posting on an Internet website, the following information:

''(1) Studies required under subsection (d) or (e) including—

''(A) the type of study;

''(B) the nature of the study;

''(C) the primary and secondary outcomes of the study;

''(D) the date the study was required under subsection (d) or (e) or was agreed to by the sponsor;

''(E) the deadline for completion of the study; and

''(F) if the study has not been completed by the deadline under subparagraph (E), a statement that explains why.

''(2) The periodic progress reports and results of completed studies described under subsection (f).

''(3) Any determinations made by the Director of the Center under subsection (g), including—

''(A) reasons for the determination, including factual basis for such determination;

''(B) reference to supporting empirical data; and

''(C) an explanation that describes why contrary data is insufficient.

''(i) DRUG ADVISORY COMMITTEE.—The Drug Safety and Risk Management Advisory Committee within the Center of the Food and Drug Administration shall—

''(1) meet not less frequently than every 180 days; and

''(2) make recommendations to the Director of the Center with respect to—

''(A) which drugs and biological products should be the subject of a study under subsection (d) or (e);

''(B) the design and duration for studies under subsection (d) or (e);

''(C) which drugs and biological products may present an unreasonable risk to the health of patients or the general public; and

''(D) appropriate corrective actions under subsection (k).

''(j) PENALTIES.—

''(1) IN GENERAL.—If the Secretary determines, after notice and opportunity for an informal hearing, that a sponsor of a drug or biological product or other entity has failed to complete a study required under subsection (d) or (e) by the date or to the terms specified by the Secretary under such subsection, the Secretary may order such sponsor or other entity to—

''(A) complete the study in a specified time;

''(B) revise the study to comply with the terms specified by the Secretary under subsection (d) or (e); or

''(C) pay a civil penalty.

''(2) AMOUNT OF PENALTIES.—

''(A) IN GENERAL.—The civil penalty ordered under paragraph (1) shall be $250,000 for the first 30-day period after the date specified by the Secretary that the study is not completed, and shall double in amount for every 30-day period thereafter that the study is not completed.

''(B) LIMITATION.—In no case shall a penalty under subparagraph (A) exceed $2,000,000 for any 30-day period.

''(3) NOTIFICATION OF PENALTY.—The Secretary shall publish in the Federal Register any civil penalty ordered under this subsection.

''(k) RESULT OF DETERMINATION.—

''(1) IN GENERAL.—If the Director of the Center makes a determination that a drug or biological product may present an unreasonable risk to the health of patients or the general public under subsection (g), such Director shall order a corrective action, as described under paragraph (2).

''(2) CORRECTIVE ACTIONS.—The corrective action described under subsection (g)—

''(A) may include—

''(i) requiring a change to the drug or biological product label by a date specified by the Director of the Center;

''(ii) modifying the approved indication of the drug or biological product to restrict use to certain patients;

''(iii) placing restriction on the distribution of the drug or biological product to ensure safe use;

''(iv) requiring the sponsor of the drug or biological product or license to establish a patient registry;

''(v) requiring patients to sign a consent form prior to receiving a prescription of the drug or biological product;

''(vi) requiring the sponsor to monitor sales and usage of the drug or biological product to detect unsafe use;

''(vii) requiring patient or physician education; and

''(viii) requiring the establishment of a risk management plan by the sponsor; and

''(B) shall include the requirements with respect to promotional material under subsection (l)(1).

''(3) PENALTIES.—

''(A) IN GENERAL.—If the Secretary determines, after notice and opportunity for an informal hearing, that a sponsor of a drug or biological product has failed to take the corrective action ordered by the Director of the Center under this subsection or has failed to comply with subsection (l)(2), the Secretary may order such sponsor to pay a civil penalty.

''(B) AMOUNT OF PENALTIES.—

''(i) IN GENERAL.—The civil penalty ordered under subparagraph (A) shall be $250,000 for the first 30-day period that the sponsor does not comply with the order under paragraph (1), and shall double in amount for every 30-day period thereafter that the order is not complied with.

''(ii) LIMITATION.—In no case shall a penalty under clause (i) exceed $2,000,000 for any 30-day period.

''(C) NOTIFICATION OF PENALTY.—The Secretary shall publish in the Federal Register any civil penalty ordered under this paragraph.

''(l) PROMOTION MATERIAL.—

''(1) SAFETY ISSUE.—If the Director of the Center makes a determination that a drug or biological product may present an unreasonable risk to the health of patients or the general public under subsection (g), such Director, in consultation with the Division of Drug Marketing, Advertising, and Communications of the Food and Drug Administration, shall—

''(A) notwithstanding section 502(n), require that the sponsor of such drug or biological product submit to the Director of the Center copies of all promotional material with respect to the drug or biological product not less than 30 days prior to the dissemination of such material; and

''(B) require that all promotional material with respect to the drug or biological product include certain disclosures, which shall be displayed prominently and in a manner easily understood by the general public, including—

''(i) a statement that describes the unreasonable risk to the health of patients or the general public as determined by the Director of the Center;

''(ii) a statement that encourages patients to discuss potential risks and benefits with their healthcare provider;

''(iii) a description of the corrective actions required under subsection (k);

''(iv) where appropriate, a statement explaining that there may be products available to treat the same disease or condition that present a more favorable benefit-to-risk profile, and that patients should talk to their healthcare provider about the risks and benefits of alternative treatments;

''(v) a description of any requirements of outstanding clinical and observational studies, including the purpose of each study; and

''(vi) contact information to report a suspected adverse reaction.

''(2) NEW PRODUCTS; OUTSTANDING STUDIES.—For the first 2-year period after a drug is approved under section 505 of this Act or a biological product is licensed under section 351 of the Public Health Service Act, and with respect to drugs and biological products for which there are outstanding study requirements under subsection (d) or (e), the Director of the Center, in consultation with the Division of Drug Marketing, Advertising, and Communications of the Food and Drug Administration, shall—

''(A) notwithstanding section 502(n), require that the sponsor of such drug or biological product submit to the Director of the Center copies of all promotional material with respect to the drug or biological product not less than 30 days prior to the dissemination of such material; and

''(B) require that all promotional material with respect to the drug or biological product include certain disclosures, which shall be displayed prominently and in a manner easily understood by the general public, including—

''(i) a statement explaining that the drug or biological product is newly approved or licensed or the subject of outstanding clinical or observational studies, as the case may be, and, as a result, not all side effects or drug interactions may be known;

''(ii) the number of people in which the drug or biological product has been studied and the duration of time during which the drug or biological product has been studied;

''(iii) a statement that encourages patients to discuss the potential risks and benefits of treatment with their healthcare provider;

''(iv) a description of any requirements of outstanding clinical and observational studies, including the purpose of each study; and

''(v) contact information to report a suspected adverse reaction.

''(3) EFFECT OF VOLUNTARY SUBMISSION.—Paragraphs (1)(A) and (2)(A) shall not apply to the sponsor of a drug or biological product if such sponsor has voluntarily submitted to the Division of Drug Marketing, Advertising, and Communications of the Food and Drug Administration all promotional material with respect to the drug or biological product prior to the dissemination of such material.

''(m) WITHDRAWAL OR SUSPENSION OF APPROVAL OR LICENSURE.—

''(1) IN GENERAL.—The Director of the Center, may withdraw or suspend approval of a drug or licensure of a biological product using expedited procedures (as prescribed by the Secretary in regulations promulgated not later than 1 year after the date of enactment of the Food and Drug Administration Safety Act of 2007, which shall include an opportunity for an informal hearing) after consultation with the Director of the Center for Drug Evaluation and Research or the Director of the Center for Biologics Evaluation and Research, as appropriate, and any other person as determined appropriate by the Director of the Center, if—

''(A) the Director of the Center makes a determination that the drug or biological product may present an unreasonable risk to the health of patients or the general public, and that risk cannot be satisfactorily alleviated by a corrective action under subsection (k); or

''(B) the sponsor fails to comply with an order or requirement under this section.

''(2) PUBLIC INFORMATION.—The Secretary shall make available to the public, by publication in the Federal Register and posting on an Internet website, the details of the consultation described in paragraph (1), including—

''(A) the reason for the determination to withdraw, suspend, or failure to withdraw or suspend, approval for the drug or licensure for the biological product;

''(B) the factual basis for such determination;

''(C) reference to supporting empirical data;

''(D) an explanation that describes why contrary data is insufficient; and

''(E) the position taken by each individual consulted.

''(n) EFFECT OF SECTION.—The authorities conferred by this section shall be separate from and in addition to the authorities conferred by section 505B.

''(o) ADMINISTRATION OF SECTION.—The provisions of this section shall be carried out by the Secretary, acting through the Director of the Center.''.

(b) MISBRANDING.—Section 502 of the Federal Food, Drug, and Cosmetic Act (21 U.S.C. 352) is amended by inserting after subsection (j) the following:

''(k) If it is a drug or biological product for which the sponsor of an application or holder of an approved application or license has not complied with an order or requirement under section 507.''.

(c) REPORT ON DEVICES.—Not later than 6 months after the date of enactment of this Act, the Secretary of Health and Human Services, in consultation with the Commissioner of Food and Drugs, the Director of the Center for Postmarket Evaluation and Research for Drugs and Biologics, and the Director of the Center for Devices and Radiological Health, shall submit to Congress a report that—

(1) identifies gaps in the current process of postmarket surveillance of devices approved under the Federal Food, Drug, and Cosmetic Act (21 U.S.C. 321 et seq.);

(2) includes recommendations on ways to improve gaps in postmarket surveillance of devices; and

(3) identifies the changes in authority needed to make those improvements, recognizing the legitimate differences between devices and other medical products regulated by the Food and Drug Administration.

(d) TRANSFER OF FUNCTIONS.—The functions and duties of the Office of Surveillance and Epidemiology, including the Drug Safety and Risk Management Advisory Committee, of the Food and Drug Administration on the day before the date of enactment of this Act shall be transferred to the Center for Postmarket Evaluation and Research for Drugs and Biologics established under section 507 of the Federal Food, Drug, and Cosmetic Act (as added by this section). The Center for Postmarket Evaluation and Research for Drugs and Biologics shall be a separate entity within the Food and Drug Administration and shall not be an administrative office of the Center for Drug Evaluation and Research or the Center for Biologics Evaluation and Research.

(e) AUTHORIZATION OF APPROPRIATIONS.—There are authorized to be appropriated to carry out this Act (and the amendments made by this Act)—

(1) $50,000,000 for fiscal year 2008;
(2) $75,000,000 for fiscal year 2009;
(3) $100,000,000 for fiscal year 2010;
(4) $125,000,000 for fiscal year 2011; and
(5) $150,000,000 for fiscal year 2012.

By Mr. BAUCUS (for himself and Mr. GRASSLEY):

S. 469. A bill to amend the Internal Revenue Code of 1986 to make permanent the special rule for contributions of qualified conservation contributions; to the Committee on Finance.

Mr. BAUCUS. Mr. President, I rise today to introduce the Rural Heritage Conservation Extension Act of 2007, along with my good friend Senator GRASSLEY from Iowa.

As we all know, the country, and my home State of Montana, are losing precious agricultural and ranch lands at a record pace. While providing Montana and the Nation with the highest quality food and fiber, these farms and ranches also provide habitat for wildlife and the open spaces, land that many of us take for granted and assume will always be there. Montana has begun to recognize the importance of these lands. We currently have 1,573,411 acres covered by conservation easements. To some, that may seem like a large amount, but this is Montana, a State that covers 93,583,532 acres, making the conservation easements coverage a mere 1.68 percent of all of our lands.

To assure that open space and habitat will be there for future generations, we must help our hardworking farmers and ranchers preserve this precious heritage and their way-of-life.

Conservation easements have been tremendously successful in preserving open space and wildlife habitat. Last year, the Congress recognized this by providing targeted income tax relief to small farmers and ranchers who wish to make a charitable contribution of a qualified conservation easement. The provision allows eligible farmers and ranchers to increase the amounts of deduction that may be taken currently for charitable contributions of qualified conservation easements by raising the Adjusted Gross Income (AGI) limitations to 100 percent and extending the carryover period from 5 years to 15 years. In the case of all landowners, the AGI limitation would be raised from 30 percent to 50 percent.

The Rural Heritage Conservation Extension Act of 2007 would make this allowable deduction permanent, building on the success of conservation easements. Our farmers and ranchers will be able to preserve their important agricultural and ranching lands for future generations, while continuing to operate their businesses. Landowners, conservationists, the Federal Government, and local communities are working together to preserve our precious natural resources.

This legislation is vitally important to Montana, and to every other State in the Nation.

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. 469

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

SECTION 1. SPECIAL RULE FOR CONTRIBUTIONS OF QUALIFIED CONSERVATION CONTRIBUTIONS MADE PERMANENT.

(a) IN GENERAL.—

(1) INDIVIDUALS.—Subparagraph (E) of section 170(b)(1) of the Internal Revenue Code of 1986 (relating to contributions of qualified conservation contributions) is amended by striking clause (vi).

(2) CORPORATIONS.—Subparagraph (B) of section 170(b)(2) of such Code (relating to qualified conservation contributions) is amended by striking clause (iii).

(b) EFFECTIVE DATE.—The amendments made by this section shall apply to contributions made in taxable years beginning after the date of the enactment of this Act.

SUBMITTED RESOLUTIONS

SENATE RESOLUTION 52—AUTHORIZING EXPENDITURES BY THE COMMITTEE ON THE BUDGET

Mr. CONRAD submitted the following resolution; from the Committee on the Budget; which was referred to the Committee on Rules and Administration.

S. RES. 52

Resolved, That, in carrying out its powers, duties, and functions under the Standing Rules of the Senate, in accordance with its jurisdiction under rule XXV of such rules, including holding hearings, reporting such hearings, and making investigations as authorized by paragraphs 1 and 8 of rule XXVI of the Standing Rules of the Senate, the Committee on the Budget is authorized from March 1, 2007, through September 30, 2007; October 1, 2007, through September 30, 2008; and October 1, 2008, through February 28, 2009, in its discretion (1) to make expenditures from the contingent fund of the Senate, (2) to employ personnel, and (3) with the prior consent of the Government department or agency concerned and the Committee on Rules and Administration, to use on a reimbursable or nonreimbursable basis the services of personnel of any such department or agency.

SEC. 2. (a) The expenses of the committee for the period March 1, 2007, through September 30, 2007, under this resolution shall not exceed $3,554,606, of which amount (1) not to exceed $35,000 may be expended for the procurement of the services of individual consultants, or organizations thereof (as authorized by section 202(i) of the Legislative Reorganization Act of 1946), and (2) not to exceed $70,000 may be expended for the training of the professional staff of such committee (under procedures specified by section 202(j) of the Legislative Reorganization Act of 1946).

(b) For the period October 1, 2007, through September 30, 2008, expenses of the committee under this resolution shall not exceed $6,230,828, of which amount (1) not to exceed $60,000 may be expended for the procurement of the services of individual consultants, or organizations thereof (as authorized by section 202(i) of the Legislative Reorganization Act of 1946), and (2) not to exceed $120,000 may be expended for the training of the professional staff of such committee (under procedures specified by section 202(j) of the Legislative Reorganization Act of 1946).

(c) For the period October 1, 2008, through February 28, 2009, expenses of the committee under this resolution shall not exceed $2,646,665, of which amount (1) not to exceed $25,000 may be expended for the procurement of the services of individual consultants, or organizations thereof (as authorized by section 202(i) of the Legislative Reorganization Act of 1946), and (2) not to exceed $50,000 may be expended for the training of the professional staff of such committee (under procedures specified by section 202(j) of the Legislative Reorganization Act of 1946).

SEC. 3. The committee shall report its findings, together with such recommendations for legislation as it deems advisable, to the Senate at the earliest practicable date, but not later than February 28, 2008, respectively.

SEC. 4. Expenses of the committee under this resolution shall be paid from the contingent fund of the Senate upon vouchers approved by the chairman of the committee, except that vouchers shall not be required (1) for the disbursement of salaries of employees paid at an annual rate, or (2) for the payment of telecommunications provided by the Office of the Sergeant at Arms and Doorkeeper, United States Senate, or (3) for the payment of stationery supplies purchased through the Keeper of the Stationery, United States Senate, or (4) for payments to the Postmaster, United States Senate, or (5) for the payment of metered charges on copying equipment provided by the Office of the Sergeant at Arms and Doorkeeper, United States Senate, or (6) for the payment of Senate Recording and Photographic Services, or (7) for payment of franked and mass mail costs by the Sergeant at Arms and Doorkeeper, United States Senate.

SENATE RESOLUTION 53—CONGRATULATING ILLINOIS STATE UNIVERSITY AS IT MARKS ITS SESQUICENTENNIAL

Mr. DURBIN (for himself and Mr. OBAMA) submitted the following resolution; which was referred to the Committe on the Judiciary:

S. RES. 53

Whereas Illinois State University marks its sesquicentennial with a year-long celebration, beginning with Founders Day on February 15, 2007;

Whereas Illinois State University is the oldest public university in the State of Illinois;

Whereas Illinois State University has 34 academic departments and offers more than 160 programs of study in the College of Applied Science and Technology, the College of Arts and Sciences, the College of Business, the College of Education, the College of Fine Arts, and the Mennonite College of Nursing;

Whereas Illinois State University is 1 of the 10 largest producers of teachers in the Nation, and nearly 1 in 7 Illinois teachers holds a degree from Illinois State University;

Whereas Milner Library at Illinois State University contains more than 3 million holdings and special collections;

Whereas Illinois State University is ranked nationally as one of the 100 ''best values'' in public higher education; and

Whereas Illinois State University participates in the American Democracy Project, an initiative that prepares students to engage in a competitive global society: Now, therefore, be it

Resolved, That the Senate congratulates Illinois State University as it marks its sesquicentennial.

Mr. DURBIN. Mr. President, I rise today to congratulate Illinois State University, ISU, as it marks its 150th year of providing an outstanding college education to students in the State of Illinois.

Illinois State University commemorates its 150th anniversary this year with a year-long celebration that begins with Founders Day on February 15, 2007. ISU was founded as Bloomington-Normal in 1857. The school was Illinois's first public university and is one of the oldest institutions of higher education in the Midwest. Abraham Lincoln himself drew up the legal papers to establish the University, which has grown from a small teachers' college to a premiere liberal arts university. The University now serves more than 20,000 talented undergraduate and graduate students from across the country and from 88 nations.

For 150 years, Illinois State University has prided itself on providing a high quality education at a cost within the reach of most students. In fact, ISU is ranked nationally as one of the 100 ''best values'' in public higher education, according to Kiplinger magazine. ISU students can choose the program that best fits their academic needs from among 63 undergraduate programs in more than 160 fields of study. In particular, I commend Illinois State for its successful College of Education, which continues the University's long tradition of educating teachers. ISU is one of the 10 largest producers of teachers in the Nation. In fact, nearly 1 in 7 Illinois teachers holds a degree from ISU. By educating future teachers, Illinois State University has played an invaluable role in shaping the education of Illinois children.

Illinois State hosts a large and successful athletics program. During the past 23 years, the ISU Redbirds have won 125 league titles in 19 intercollegiate sports. Redbird competitors have gone on to be professional athletes, Olympians, and World Series Champions, as in the case of pitcher Neal Cotts, an ISU alumnus and member of the 2005 World Champion Chicago White Sox team.

Students at Illinois State are encouraged to embrace the University's motto, ''Gladly we Learn and Teach,'' both in and outside the classroom. Many students choose to take part in public service and outreach programs that provide learning and service experiences beyond the classroom. ISU also participates in the American Democracy Project, an initiative that prepares students to be engaged in a competitive global society.

Illinois State University has proven itself to be a tremendous asset to the students and citizens of Illinois for the past 150 years. I congratulate the University on its 150th anniversary, and I look forward to many more years of excellence in education and academic advancement in the future.

SENATE RESOLUTION 54—AUTHORIZING EXPENDITURES BY THE COMMITTEE ON HEALTH, EDUCATION, LABOR, AND PENSIONS

Mr. KENNEDY submitted the following resolution; from the Committee on Health, Education, Labor, and Pensions; which was referred to the Committee on Rules and Administration: