been sought against a convicted defendant can continue to be pursued and collected after the defendant's death.

It would establish a process to ensure that after a person dies, a representative of his estate can stand in the shoes of the defendant and challenge or appeal his conviction if they want, and can also secure a lawyer—either on their own or by having one appointed, and

If the Government had filed a criminal forfeiture action—in which it had sought to reach the defendant's assets that were linked to his crimes—the Government would get an extra 2 years after the defendant's death to file a parallel civil forfeiture lawsuit so that it could try to recover those same assets in a different, and traditionally-accepted manner.

The need for this legislation was vividly demonstrated last month. On October 17, 2006, U.S. District Judge Sim Lake, of the Southern District of Texas, wiped clean the criminal record of Enron founder Kenneth Lay, even after a jury and judge had unanimously found him guilty of 10 criminal charges, including securities fraud, wire fraud involving false and misleading statements, bank fraud and conspiracy.

That decision was not based on an error in the trial or any suggestion of unfairness in the proceedings. Instead, it was simply based on the fact that Mr. Lay died before his conviction had been affirmed on appeal, under a common law rule known as ''abatement.''

In other words, this order essentially means that Mr. Lay is ''convicted but not guilty''—''innocent by reason of his death.''

Judge Lake granted this dismissal even in the face of DOJ Enron Task Force filings, which noted how Mr. Lay's conviction ''provided the basis for the likely disgorgement of fraud proceeds totaling tens of millions of dollars.'' In other words, the dismissal means that millions dollars, that the jury found were obtained by Mr. Lay illegally, will now remain untouched in the Lay estate. And everyone agrees that former Enron employees and shareholders will now find it much harder to lay claim to these ill-gotten gains held by Mr. Lay's estate, because they will be unable to point to his criminal conviction as proof of his wrongdoing.

I do not fault Judge Lake for issuing this order. He made it clear that he was simply following the binding precedent issued in 2004 by the full U.S. Court of Appeals for the 5th Circuit, in a case called United States v. Estate of Parsons.

But as I noted in a letter I wrote to Attorney General Gonzales on October 20, 2006, the Fifth Circuit's Parsons decision goes far beyond the traditional rule of law in this area. While the common-law doctrine of abatement has historically wiped out ''punishments'' following a criminal defendant's death, the Supreme Court has never held that it must also wipe out a victim's right to other forms of relief such as restitution, which simply compensate third parties who were injured by criminal misconduct.

As the six dissenters in Parsons noted, the majority's '' 'finality rationale' is a completely novel judicial creation which has not been embraced or even suggested by . . . other courts.'' The Third and Fourth Circuits, for example, have expressly refused to take this position, and upheld a restitution order after a criminal defendant's death.

The Parsons decision was remarkable in several other respects, including the fact that (as the dissenters noted), its new rule of law was apparently inspired by a single law review article. That academic piece boldly claimed that a criminal defendant's right of appeal is ''evolving into a constitutional right,'' and suggested that a conviction untested by appellate review is unreliable and illegitimate. This notion runs contrary to the traditional rule applied in virtually every other context—where a jury's findings are typically respected under the law.

Of course a defendant is presumed innocent at the outset of his case. After a jury has deliberated and unanimously issued a formal finding of guilt, however, that presumption of innocence no longer stands.

The Parsons ''finality'' rationale raises the absurd possibility that even a defendant who fully admitted his wrongdoing and pleaded guilty, but who then died while an appeal of his sentence was pending, could have his entire criminal conviction erased. In fact, this has already occurred, in the 1994 case of United States v. Pogue, where the D.C. Circuit ordered the dismissal of a conviction of a defendant whose appeal was pending—even though the docketing statement had said that the defendant intended to challenge only his sentence, and not his underlying conviction.

I have urged the Attorney General to continue to fight for Enron victims by appealing Judge Lake's dismissal to the Supreme Court. There, he should ask for a resolution of this split in the law between these Circuits, so that he can try to get the Parsons rule overturned. Unfortunately, the Justice Department has been noncommittal—it refuses to say if it will appeal the Ken Lay dismissal or not, even with the filing deadline fast approaching.

In the meantime, rather than remaining silent on this issue, and hoping that the Attorney General will appeal the Lay case as he should, I believe the time has come for Congress to take action.

While I have no desire for our Government to punish a criminal defendant who dies, the calculation should be different when we are determining how to make up for harm suffered by other individuals.

There is surely a legal and moral basis for not punishing the dead. But there is also, more importantly, a legal and moral basis for defending the living. The legislation that I introduce today codifies that distinction.

This legislation offers a fair solution and orderly process in the event that a criminal defendant dies prior to his final appeal.

Enron's collapse in 2001 wiped out thousands of jobs, more than $60 billion in market value, and more than $2 billion in pension plans. When America's seventh largest company crumbled into bankruptcy after its accounting tricks could no longer hide its billions in debt, countless former Enron employees and shareholders lost their entire life savings after investing in Enron's 401(k) plan.

Many of these Enron victims have been following closely the years of preparation by the Enron Task Force, and the four-month jury trial and separate one-week bench trial, hoping to finally recover some restitution in this criminal case. And despite Mr. Lay's vigorous efforts to avoid being held accountable for his actions, a conviction was finally secured.

Yet now these people have essentially been victimized again. They will be forced to start all over in their efforts to get back some portion of the pension funds on which they expected to subsist, and the other hard-earned assets that will remain beyond their reach, despite the unanimous, hard-fought verdicts finding Mr. Lay guilty of all ten counts with which he had been charged.

The time has come for Congress to end this injustice—hopefully, by acting quickly enough to assist these Enron victims, but in any event in a way that will prevent this type of injustice from ever happening again in the future.

I urge my colleagues to support this legislation.

SUBMITTED RESOLUTIONS

SENATE RESOLUTION 614—HONORING THE FIREFIGHTERS AND OTHER PUBLIC SERVANTS WHO RESPONDED TO THE DEVASTATING ESPERANZA INCIDENT FIRE IN SOUTHERN CALIFORNIA IN OCTOBER 2006

Mrs. BOXER (for herself and Mrs. FEINSTEIN) submitted the following resolution; which was referred to the Committee on the Judiciary:

S. RES. 614

Whereas, in late October 2006, the mountain communities west of Palm Springs, California were struck by a vast wildfire, which came to be known as the Esperanza

Incident and which authorities believe was started by an arsonist;

Whereas the Esperanza Incident fire tragically claimed lives, homes and other buildings, and more than 40,000 acres of terrain;

Whereas nearly 3,000 firefighters from dozens of fire crews courageously battled the fast-spreading blaze, which was fanned by Santa Ana wind gusts up to 60 miles per hour;

Whereas 4 firefighters—Mark Loutzenhiser, Jess McLean, Jason McKay, and Daniel Hoover-Najera—made the ultimate sacrifice by giving their lives when flames overtook them as they tried to protect a home;

Whereas an additional firefighter, Pablo Cerda, joined them in that sacrifice when he too lost his life, after fighting to survive for 6 days in a hospital before succumbing to burns he had received fighting alongside his fallen colleagues;

Whereas firefighters honored the spirit of their fallen colleagues by completing the job they started and controlling the blaze, even while recognizing considerable danger to their own well-being;

Whereas skilled and courageous aircraft personnel and additional emergency personnel, including law enforcement and medical personnel, also responded to the threat posed by the fire; and

Whereas law enforcement personnel are aggressively pursuing the conviction of the arsonist, and generous Californians have offered additional funds, on top of those offered by the Riverside County Board of Supervisors, to help bring the arsonist to justice: Now, therefore, be it

Resolved, That the Senate—

(1) recognizes and honors—

(A) all of the firefighters who responded to the devastating Esperanza Incident fire in southern California in October 2006; and

(B) all others, including emergency, law enforcement, and medical personnel and aircraft crews, who contributed to controlling the fire, keeping Californians safe, and finding and arresting the suspected arsonist; and

(2) commends the firefighters and other personnel who responded to the fire for dedicated service to the people of California.

AMENDMENTS SUBMITTED AND PROPOSED

SA 5149. Mrs. DOLE (for herself and Mr. BURR) submitted an amendment intended to be proposed by her to the bill H.R. 5384, making appropriations for Agriculture, Rural Development, Food and Drug Administration, and Related Agencies for the fiscal year ending September 30, 2007, and for other purposes; which was ordered to lie on the table.

SA 5150. Mr. DAYTON submitted an amendment intended to be proposed by him to the bill H.R. 5384, supra; which was ordered to lie on the table.

SA 5151. Mr. VITTER (for himself, Mr. NELSON of Florida, Ms. STABENOW, and Ms. COLLINS) submitted an amendment intended to be proposed by him to the bill H.R. 5384, supra; which was ordered to lie on the table.

SA 5152. Mr. VITTER (for himself, Mr. NELSON of Florida, Ms. STABENOW, and Ms. COLLINS) submitted an amendment intended to be proposed by him to the bill H.R. 5384, supra; which was ordered to lie on the table.

SA 5153. Mr. COBURN submitted an amendment intended to be proposed by him to the bill H.R. 5384, supra; which was ordered to lie on the table.

SA 5154. Mr. COBURN submitted an amendment intended to be proposed by him to the bill H.R. 5384, supra; which was ordered to lie on the table.

SA 5155. Mr. COBURN submitted an amendment intended to be proposed by him to the bill H.R. 5384, supra; which was ordered to lie on the table.

SA 5156. Mr. COBURN submitted an amendment intended to be proposed by him to the bill H.R. 5384, supra; which was ordered to lie on the table.

SA 5157. Mr. COBURN submitted an amendment intended to be proposed by him to the bill H.R. 5384, supra; which was ordered to lie on the table.

SA 5158. Mr. COBURN submitted an amendment intended to be proposed by him to the bill H.R. 5384, supra; which was ordered to lie on the table.

SA 5159. Mr. COBURN submitted an amendment intended to be proposed by him to the bill H.R. 5384, supra; which was ordered to lie on the table.

SA 5160. Mr. COBURN submitted an amendment intended to be proposed by him to the bill H.R. 5384, supra; which was ordered to lie on the table.

SA 5161. Mr. COBURN submitted an amendment intended to be proposed by him to the bill H.R. 5384, supra; which was ordered to lie on the table.

SA 5162. Mr. COBURN submitted an amendment intended to be proposed by him to the bill H.R. 5384, supra; which was ordered to lie on the table.

SA 5163. Mr. COBURN submitted an amendment intended to be proposed by him to the bill H.R. 5384, supra; which was ordered to lie on the table.

SA 5164. Mr. COBURN submitted an amendment intended to be proposed by him to the bill H.R. 5384, supra; which was ordered to lie on the table.

SA 5165. Mr. COBURN submitted an amendment intended to be proposed by him to the bill H.R. 5384, supra; which was ordered to lie on the table.

SA 5166. Mr. COBURN (for himself and Mr. OBAMA) submitted an amendment intended to be proposed by him to the bill H.R. 5384, supra; which was ordered to lie on the table.

SA 5167. Ms. COLLINS (for herself and Ms. SNOWE) submitted an amendment intended to be proposed by her to the bill H.R. 5384, supra; which was ordered to lie on the table.

TEXT OF AMENDMENTS

SA 5149. Mrs. DOLE (for herself and Mr. BURR) submitted an amendment intended to be proposed by her to the bill H.R. 5384, making appropriations for Agriculture, Rural Development, Food and Drug Administration, and Related Agencies for the fiscal year ending September 30, 2007, and for other purposes; which was ordered to lie on the table; as follows:

On page 168, strike lines 7 and 8 and insert the following: ''the purchase of land and moving of utilities;

(6) the Town of Boone, North Carolina, a rural area for purposes of eligibility for Rural Utilities Service water and waste water loans and grants; and

(7) the Cities of Alamo, Mercedes, Weslaco, and

SA 5150. Mr. DAYTON submitted an amendment intended to be proposed by him to the bill H.R. 5384, making appropriations for Agriculture, Rural Development, Food and Drug Administration, and Related Agencies for the fiscal year ending September 30, 2007, and for other purposes; which was ordered to lie on the table; as follows:

On page 175, between lines 9 and 10, insert the following:

SEC. 758. None of the funds made available by this Act may be used to take an action that would violate Executive Order 13149 (65 Fed. Reg. 24607; relating to greening the government through Federal fleet and transportation efficiency).

SA 5151. Mr. VITTER (for himself, Mr. NELSON of Florida, Ms. STABENOW, and Ms. COLLINS) submitted an amendment intended to be proposed by him to the bill H.R. 5384, making appropriations for Agriculture, Rural Development, Food and Drug Administration, and Related Agencies for the fiscal year ending September 30, 2007, and for other purposes; which was ordered to lie on the table; as follows:

On page 175, between lines 9 and 10, insert the following:

SEC. 758. None of the funds made available in this Act for the Food and Drug Administration may be used to prevent an individual not in the business of importing a prescription drug (within the meaning of section 801(g) of the Federal Food, Drug, and Cosmetic Act (21 U.S.C. 381(g))) from importing a prescription drug from Canada that complies with sections 501, 502, and 505 of such Act (21 U.S.C. 351, 352, and 355).

SA 5152. Mr. VITTER (for himself, Mr. NELSON of Florida, Ms. STABENOW, and Ms. COLLINS) submitted an amendment intended to be proposed by him to the bill H.R. 5384, making appropriations for Agriculture, Rural Development, Food and Drug Administration, and Related Agencies for the fiscal year ending September 30, 2007, and for other purposes; which was ordered to lie on the table; as follows:

On page 175, between lines 9 and 10, insert the following:

SEC. 758. None of the funds made available in this Act for the Food and Drug Administration may be used to prevent an individual not in the business of importing a prescription drug (within the meaning of section 801(g) of the Federal Food, Drug, and Cosmetic Act (21 U.S.C. 381(g))) from importing a prescription drug from Canada that complies with sections 501, 502, and 505 of such Act (21 U.S.C. 351, 352, and 355): *Provided*, That this section shall apply only to a personal-use quantity of the prescription drug, not to exceed a 90-day supply: *Provided further*, That the prescription drug may not be—

(1) a controlled substance, as defined in section 102 of the Controlled Substances Act (21 U.S.C. 802); or

(2) a biological product, as defined in section 351 of the Public Health Service Act (42 U.S.C. 262).

SA 5153. Mr. COBURN submitted an amendment intended to be proposed by him to the bill H.R. 5384, making appropriations for Agriculture, Rural Development, Food and Drug Administration, and Related Agencies for the fiscal year ending September 30, 2007, and for other purposes; which was ordered to lie on the table; as follows: