proposed to H.R. 1, a bill making supplemental appropriations for job preservation and creation, infrastructure investment, energy efficiency and science, assistance to the unemployed, and State and local fiscal stabilization, for fiscal year ending September 30, 2009, and for other purposes.

STATEMENTS ON INTRODUCED BILLS AND JOINT RESOLUTIONS

By Mr. KERRY:

S. 366. A bill to amend the Social Security Act to eliminate the 5-month waiting period for Social Security disability and the 24-month waiting period for Medicare benefits in the cases of individuals with disabling burn injuries; to the Committee on Finance.

Mr. KERRY. Mr. President, each year an estimated 500,000 people are treated for burn injuries, with 40,000 requiring hospitalization. It is time that we do more to aid those who suffer from disabling burns, which is why I am introducing the Social Security and Medicare Improved Burn Injury Treatment Access Act of 2009. I am pleased to join my colleague from Massachusetts, Congressman RICHARD NEAL, who introduced similar legislation in the House of Representatives.

This legislation provides a waiver of the 24-month waiting period now required before an uninsured individual becomes eligible for Medicare coverage for disabling burn injuries. It also provides a waiver for the five-month waiting period for Social Security disability benefits. This will help provide greater assistance to those who suffer from burn injuries and much needed support for the burn centers that treat them. Burn care is highly specialized and expensive. Since approximately 40 percent of burn victims are uninsured, this places a great financial strain on burn centers, causing some of them to close.

At a time when we are asking burn centers to be prepared to deal with catastrophic cases, and expand their capacity, we also must provide the support they need. Chemical fires, explosions, terrorist attacks, and major accidents are scenarios where burn centers play a critical role in public health. Over one-third of those hospitalized in New York following the September 11 terrorist attacks had severe burn injuries.

This legislation will provide immediate Medicare coverage for uninsured patients suffering serious, disabling burn injuries. It follows an approach already taken with other conditions such as End Stage Renal Disease, ESRD, and amyotrophic lateral sclerosis ALS or Lou Gehrig's disease, both of which result in waivers of the 24-month waiting period for Medicare eligibility.

This legislation has important cost containment measures. To prevent shifting the burden of care, no one with public or private insurance at the time of their burn injury will be eligible for the 24-month waiver, and state public insurance programs will not be allowed to restrict coverage for burn patients as a way to shift the responsibility to Medicare. Each individual's disability status is required to be reevaluated at least once every three years to ensure that those who have made a full recovery are not allowed to stay on Medicare indefinitely.

We cannot allow our Nation's burn centers to continue closing due to a lack of financial resources. They are a vital resource and through them, we have the opportunity to give burn victims the best possible chance at recovery. I ask all my colleagues to support this legislation.

By Mr. KOHL (for himself, Mr. GRASSLEY, Mr. FEINGOLD, Mr. DURBIN, and Mr. BROWN):

S. 369. A bill to prohibit brand name drug companies from compensating generic drug companies to delay the entry of a generic drug into the market; to the Committee on the Judiciary.

Mr. KOHL. Mr. President, I rise today to introduce, with Senators GRASSLEY, FEINGOLD, DURBIN and BROWN, the Preserve Access to Affordable Generics Act. Our legislation will prevent one of the most egregious tactics used to keep generic competitors off the market, leaving consumers with unnecessarily high drug prices. The way it is done is simple—a drug company that holds a patent on a brand-name drug pays a generic drug maker to not sell a competing product. The brand name company profits so much by delaying competition that it can easily afford to pay off the generic company. The only losers are the American people, who continue to pay unnecessarily high drug prices for years to come.

Our legislation is basically very simple it will make these anti-competitive, anti-consumer patent payoffs illegal. We will thereby end a practice seriously impeding generic drug competition, competition that could save consumers literally billions of dollars in health care costs. When we first introduced this legislation to ban these pay-off settlements in 2007, it had broad support from those concerned with rising health care costs, including the AARP. The New York Times editorialized in January 2007 in support of legislation to ban the pay-off settlements, pointing out that the settlements ''are a costly legal loophole that needs to be plugged by Congressional legislation.''

Despite the opposition of the Federal Trade Commission to these anti-competitive patent settlements, two 2005 appellate court decisions have permitted these backroom payoffs. And the effect of these court decisions has been stark. In the two years after these two decisions, the FTC has found, half of all patent settlements involved payments from the brand name from the generic manufacturer in return for an agreement by the generic to keep its drug off the market. In the year before these decisions, not a single patent settlement reported to the FTC contained such an agreement.

When brand name drugs lose their patent monopoly, this opens the door for consumers, employers, third-party payers, and other purchasers to save billions—30 percent to 80 percent on average—by using generic versions of these drugs. A recent study released by the Pharmaceutical Care Management Association showed that health plans and consumers could save $26.4 billion over 5 years by using the generic versions of 14 popular drugs that are scheduled to lose their patent protections before 2010.

The urgency of the need for this legislation was highlighted just yesterday, when the FTC filed an antitrust case challenging the latest ''pay for delay'' settlement. The FTC's Complaint alleges that Solvay, the brand name manufacturer of a hormone-boosting drug, entered into an agreement with two generic companies to delay the entry of their generic version of the drug for nine years. The FTC alleged that Solvay agreed in 2006 to share its profits with the generic competitors as long as they did not launch their generic versions until 2015. If these allegations are true, this is exactly the anti-consumer, anti-competition agreement that would be rendered illegal by our bill.

We introduced this bill in the last Congress and it passed out of the Judiciary Committee without a dissenting vote. Nonetheless, we heard from some in the generic drug industry that on occasion these patent settlements may not harm competition. That is why this year's version of the legislation includes a new provision not contained in the bill introduced in the last Congress. This new provision would permit the Federal Trade Commission the guardians of competition in this industry to exempt from this amendment's ban certain agreements if the FTC determines such agreements would benefit consumers. This provision will ensure that our amendment does not prevent any agreements which will truly benefit consumers.

It is also important to note that—contrary to the arguments made by some—our amendment will not ban all patent settlements. In fact, our bill will not ban any settlement which does not involve an exchange of money. This legislation will do nothing to prevent parties from settling patent litigation with an agreement that a generic will delay entry for some period of time in return for ending its challenge to the validity of the patent. Only the egregious pay-off settlements in which the

brand name company also pays the generic company a sum of money to do so will be banned.

In closing, we cannot profess to care about the high cost of prescription drugs while turning a blind eye to anti-competitive backroom deals between brand and generic drug companies. It is time to stop these drug company pay-offs that only serve the companies involved and deny consumers to affordable generic drugs. I urge my colleagues to join me in this effort by supporting this legislation.

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. 369

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 ''Preserve Access to Affordable Generics Act''.

SEC. 2. CONGRESSIONAL FINDINGS AND DECLARATION OF PURPOSES.

(a) FINDINGS.—The Congress finds that—

(1) prescription drugs make up 10 percent of the national health care spending but for the past decade have been 1 of the fastest growing segments of health care expenditures.

(2) 67 percent of all prescriptions dispensed in the United States are generic drugs, yet they account for only 20 percent of all expenditures;

(3) generic drugs, on average, cost 30 to 80 percent less than their brand-name counterparts;

(4) consumers and the health care system would benefit from free and open competition in the pharmaceutical market and the removal of obstacles to the introduction of generic drugs;

(5) full and free competition in the pharmaceutical industry, and the full enforcement of antitrust law to prevent anti-competitive practices in this industry, will lead to lower prices, greater innovation, and inure to the general benefit of consumers.

(6) the Federal Trade Commission has determined that some brand name pharmaceutical manufacturers collude with generic drug manufacturers to delay the marketing of competing, low-cost, generic drugs;

(7) collusion by pharmaceutical manufacturers is contrary to free competition, to the interests of consumers, and to the principles underlying antitrust law;

(8) in 2005, 2 appellate court decisions reversed the Federal Trade Commission's long-standing position, and upheld settlements that include pay-offs by brand name pharmaceutical manufacturers to generic manufacturers designed to keep generic competition off the market;

(9) in the 6 months following the March 2005 court decisions, the Federal Trade Commission found there were three settlement agreements in which the generic received compensation and agreed to a restriction on its ability to market the product;

(10) the FTC found that ½ of the settlements made in 2006 and 2007 between brand name and generic companies, and over ⅔ of the settlements with generic companies with exclusivity rights that blocked other generic drug applicants, included a pay-off from the brand name manufacturer in exchange for a promise from the generic company to delay entry into the market; and

(11) settlements which include a payment from a brand name manufacturer to a generic manufacturer to delay entry by generic drugs are anti-competitive and contrary to the interests of consumers.

(b) PURPOSES.—The purposes of this Act are—

(1) to enhance competition in the pharmaceutical market by prohibiting anticompetitive agreements and collusion between brand name and generic drug manufacturers intended to keep generic drugs off the market;

(2) to support the purpose and intent of antitrust law by prohibiting anticompetitive agreements and collusion in the pharmaceutical industry; and

(3) to clarify the law to prohibit payments from brand name to generic drug manufacturers with the purpose to prevent or delay the entry of competition from generic drugs.

SEC. 3. UNLAWFUL COMPENSATION FOR DELAY.

(a) IN GENERAL.—The Clayton Act (15 U.S.C. 12 et seq.) is amended by inserting after section 28 the following:

''SEC. 29. UNLAWFUL INTERFERENCE WITH GENERIC MARKETING.

''(a) It shall be unlawful under this Act for any person, in connection with the sale of a drug product, to directly or indirectly be a party to any agreement resolving or settling a patent infringement claim in which—

''(1) an ANDA filer receives anything of value; and

''(2) the ANDA filer agrees not to research, develop, manufacture, market, or sell the ANDA product for any period of time.

''(b) Nothing in this section shall prohibit a resolution or settlement of patent infringement claim in which the value paid by the NDA holder to the ANDA filer as a part of the resolution or settlement of the patent infringement claim includes no more than the right to market the ANDA product prior to the expiration of the patent that is the basis for the patent infringement claim.

''(c) In this section:

''(1) The term 'agreement' means anything that would constitute an agreement under section 1 of the Sherman Act (15 U.S.C. 1) or section 5 of the Federal Trade Commission Act (15 U.S.C. 45).

''(2) The term 'agreement resolving or settling a patent infringement claim' includes, any agreement that is contingent upon, provides a contingent condition for, or is otherwise related to the resolution or settlement of the claim.

''(3) The term 'ANDA' means an abbreviated new drug application, as defined under section 505(j) of the Federal Food, Drug, and Cosmetic Act (21 U.S.C. 355(j)).

''(4) The term 'ANDA filer' means a party who has filed an ANDA with the Food and Drug Administration.

''(5) The term 'ANDA product' means the product to be manufactured under the ANDA that is the subject of the patent infringement claim.

''(6) The term 'drug product' means a finished dosage form (e.g., tablet, capsule, or solution) that contains a drug substance, generally, but not necessarily, in association with 1 or more other ingredients, as defined in section 314.3(b) of title 21, Code of Federal Regulations.

''(7) The term 'NDA' means a new drug application, as defined under section 505(b) of the Federal Food, Drug, and Cosmetic Act (21 U.S.C. 355(b)).

''(8) The term 'NDA holder' means—

''(A) the party that received FDA approval to market a drug product pursuant to an NDA;

''(B) a party owning or controlling enforcement of the patent listed in the Approved Drug Products With Therapeutic Equivalence Evaluations (commonly known as the 'FDA Orange Book') in connection with the NDA; or

''(C) the predecessors, subsidiaries, divisions, groups, and affiliates controlled by, controlling, or under common control with any of the entities described in subclauses (i) and (ii) (such control to be presumed by direct or indirect share ownership of 50 percent or greater), as well as the licensees, licensors, successors, and assigns of each of the entities.

''(9) The term 'patent infringement' means infringement of any patent or of any filed patent application, extension, reissue, renewal, division, continuation, continuation in part, reexamination, patent term restoration, patents of addition and extensions thereof.

''(10) The term 'patent infringement claim' means any allegation made to an ANDA filer, whether or not included in a complaint filed with a court of law, that its ANDA or ANDA product may infringe any patent held by, or exclusively licensed to, the NDA holder of the drug product.''.

(b) REGULATIONS.—The Federal Trade Commission may, by rule promulgated under section 553 of title 5, United States Code, exempt certain agreements described in section 29 of the Clayton Act, as added by subsection (a), if the Commission finds such agreements to be in furtherance of market competition and for the benefit of consumers. Consistent with the authority of the Commission, such rules may include interpretive rules and general statements of policy with respect to the practices prohibited under section 29 of the Clayton Act.

SEC. 4. NOTICE AND CERTIFICATION OF AGREEMENTS.

(a) NOTICE OF ALL AGREEMENTS.—Section 1112(c)(2) of the Medicare Prescription Drug, Improvement, and Modernization Act of 2003 (21 U.S.C. 3155 note) is amended by—

(1) striking ''the Commission the'' and inserting ''the Commission (1) the''; and

(2) inserting before the period at the end the following: ''; and (2) a description of the subject matter of any other agreement the parties enter into within 30 days of an entering into an agreement covered by subsection (a) or (b)''.

(b) CERTIFICATION OF AGREEMENTS.—Section 1112 of such Act is amended by adding at the end the following:

''(d) CERTIFICATION.—The Chief Executive Officer or the company official responsible for negotiating any agreement required to be filed under subsection (a), (b), or (c) shall execute and file with the Assistant Attorney General and the Commission a certification as follows: 'I declare under penalty of perjury that the following is true and correct: The materials filed with the Federal Trade Commission and the Department of Justice under section 1112 of subtitle B of title XI of the Medicare Prescription Drug, Improvement, and Modernization Act of 2003, with respect to the agreement referenced in this certification: (1) represent the complete, final, and exclusive agreement between the parties; (2) include any ancillary agreements that are contingent upon, provide a contingent condition for, or are otherwise related to, the referenced agreement; and (3) include written descriptions of any oral agreements, representations, commitments, or promises

between the parties that are responsive to subsection (a) or (b) of such section 1112 and have not been reduced to writing.'.''.

SEC. 5. FORFEITURE OF 180-DAY EXCLUSIVITY PERIOD.

Section 505 of the Federal Food, Drug and Cosmetic Act (21 U.S.C. 355(j)(5)(D)(i)(V)) is amended by inserting ''section 29 of the Clayton Act or'' after ''that the agreement has violated''.

By Mr. AKAKA (for himself, Ms. COLLINS, Mr. GRASSLEY, Mr. LEVIN, Mr. LIEBERMAN, Mr. VOINOVICH, Mr. LEAHY, Mr. KENNEDY, Mr. CARPER, Mr. PRYOR, and Ms. MIKULSKI):

S. 372. A bill to amend chapter 23 of title 5, United States Code, to clarify the disclosures of information protected from prohibited personnel practices, require a statement in nondisclosure policies, forms, and agreements that such policies, forms, and agreements conform with certain disclosure protections, provide certain authority for the Special Counsel, and for other purposes; to the Committee on Homeland Security and Governmental Affairs.

Mr. AKAKA. Mr. President, today I rise to reintroduce the Whistleblower Protection Enhancement Act. I am pleased that Senators COLLINS, GRASSLEY, LEVIN, LIEBERMAN, VOINOVICH, LEAHY, KENNEDY, CARPER, PRYOR, and MIKULSKI have joined as cosponsors of this bill.

I have been a long-time proponent of strengthening the rights and protections of federal whistleblowers. Last year, my bill, the Federal Employee Protection of Disclosures Act, S. 274, passed the Senate by unanimous consent in December 2007. A similar House bill, the Whistleblower Protection Enhancement Act, also passed in March 2008. Unfortunately, we were not able to reconcile the two bills and enact whistleblower protections before the 110th Congress adjourned.

The need for strengthened whistleblower protections is clear. In this time of economic crisis, we cannot wait to act on measures to make sure the government uses tax dollars efficiently and effectively. Indeed, President Obama emphasized the need for improved accountability in his inaugural address, stating:

Those of us who manage the public's dollars will be held to account—to spend wisely, reform bad habits, and do our business in the light of day—because only then can we restore the vital trust between a people and their government.

This legislation will help us hold those who manage the public's dollars accountable by strengthening protections for Federal workers who shed light on Government waste, fraud, and abuse. Our bill also will contribute to public health and safety, civil rights and civil liberties, national security, and other valuable interests. Federal employees often are in the best position to observe and disclose Federal Government wrongdoing that can affect every aspect of our economy and our lives, and fewer employees will have the courage to disclose wrongdoing without meaningful whistleblower protections.

The Whistleblower Protection Act, WPA, was intended to shield Federal whistleblowers from retaliation, but the Federal Circuit and the Merit Systems Protection Board repeatedly have issued decisions that misconstrue the WPA and scale back its protections. Federal whistleblowers have prevailed on the merits of their claims before the Federal Circuit Court of Appeals, which has sole jurisdiction over federal employee whistleblower appeals, only three times in hundreds of cases since 1994. That is why further action is necessary.

I will highlight a few of the important provisions in this bill. Our bill would eliminate a number of restrictions that the Federal Circuit has read into the law regarding when disclosures are covered by the WPA. In light of the Federal Circuit's restrictive reading of the WPA, it would establish a pilot program to allow whistleblower appeals to be filed in the appropriate regional Federal Court of Appeals for five years, and would require a Government Accountability Office review of that change 40 months after enactment. This bill would bar agencies from enforcing a nondisclosure policy, revoking an employee's security clearance, or investigating an employee in retaliation for a protected disclosure.

This bill also includes a few improvements in whistleblower protection that were not in S. 274. It would expand the coverage of the Whistleblower Protection Act to include employees of the Transportation Security Administration. Additionally, it would make clear that disclosures of censorship of scientific information that could lead to gross government waist or mismanagement, a substantial and specific danger to public health or safety, or a violation of law are protected.

Congress has a duty to provide strong protections for Federal whistleblowers. Only when Federal employees are confident that they will not face retaliation will they feel comfortable coming forward to disclose information that can be used to improve government operations, our national security, and the health of our citizens.

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. 372

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

SECTION 1. PROTECTION OF CERTAIN DISCLOSURES OF INFORMATION BY FEDERAL EMPLOYEES.

(a) SHORT TITLE.—This Act may be cited as the ''Whistleblower Protection Enhancement Act of 2009''.

(b) CLARIFICATION OF DISCLOSURES COVERED.—

(1) IN GENERAL.—Section 2302(b)(8) of title 5, United States Code, is amended—

(A) in subparagraph (A)—

(i) by striking ''which the employee or applicant reasonably believes evidences'' and inserting '', without restriction to time, place, form, motive, context, forum, or prior disclosure made to any person by an employee or applicant, including a disclosure made in the ordinary course of an employee's duties, that the employee or applicant reasonably believes is evidence of'';

(ii) in clause (i), by striking ''a violation'' and inserting ''any violation''; and

(iii) by striking ''or'' at the end;

(B) in subparagraph (B)—

(i) by striking ''which the employee or applicant reasonably believes evidences'' and inserting '', without restriction to time, place, form, motive, context, forum, or prior disclosure made to any person by an employee or applicant, including a disclosure made in the ordinary course of an employee's duties, of information that the employee or applicant reasonably believes is evidence of'';

(ii) in clause (i), by striking ''a violation'' and inserting ''any violation (other than a violation of this section)''; and

(iii) in clause (ii), by adding ''or'' at the end; and

(C) by adding at the end the following:

''(C) any disclosure that—

''(i) is made by an employee or applicant of information required by law or Executive order to be kept secret in the interest of national defense or the conduct of foreign affairs that the employee or applicant reasonably believes is direct and specific evidence of—

''(I) any violation of any law, rule, or regulation;

''(II) gross mismanagement, a gross waste of funds, an abuse of authority, or a substantial and specific danger to public health or safety; or

''(III) a false statement to Congress on an issue of material fact; and

''(ii) is made to—

''(I) a member of a committee of Congress having a primary responsibility for oversight of a department, agency, or element of the Federal Government to which the disclosed information relates and who is authorized to receive information of the type disclosed;

''(II) any other Member of Congress who is authorized to receive information of the type disclosed; or

''(III) an employee of Congress who has the appropriate security clearance and is authorized to receive information of the type disclosed.''.

(2) PROHIBITED PERSONNEL PRACTICES UNDER SECTION 2302(b)(9).—

(A) TECHNICAL AND CONFORMING AMENDMENTS.—Title 5, United States Code, is amended in subsections (a)(3), (b)(4)(A), and (b)(4)(B)(i) of section 1214, in subsections (a), (e)(1) and (i) of section 1221, and in subsection (a)(2)(C)(i) of 2302 by inserting ''or 2302(b)(9) (B) through (D)'' after ''section 2302(b)(8)'' or ''(b)(8)'' each place it appears.

(B) OTHER REFERENCES.—Title 5, United States Code, is amended in subsection (b)(4)(B)(i) of section 1214 and in subsection

(e)(1) of section 1221 by inserting ''or protected activity'' after ''disclosure'' each place it appears.

(c) DEFINITIONAL AMENDMENTS.—

(1) DISCLOSURES.—Section 2302(a)(2) of title 5, United States Code, is amended—

(A) in subparagraph (B)(ii), by striking ''and'' at the end;

(B) in subparagraph (C)(iii), by striking the period at the end and inserting ''; and''; and

(C) by adding at the end the following:

''(D) 'disclosure' means a formal or informal communication or transmission, but does not include a communication concerning policy decisions that lawfully exercise discretionary authority unless the employee or applicant providing the disclosure reasonably believes that the disclosure evidences—

''(i) any violation of any law, rule, or regulation; or

''(ii) gross mismanagement, a gross waste of funds, an abuse of authority, or a substantial and specific danger to public health or safety.''.

(2) CLEAR AND CONVINCING EVIDENCE.—Sections 1214(b)(4)(B)(ii) and 1221(e)(2) of title 5, United States Code, are amended by adding at the end the following: ''For purposes of the preceding sentence, 'clear and convincing evidence' means evidence indicating that the matter to be proved is highly probable or reasonably certain.''.

(d) REBUTTABLE PRESUMPTION.—Section 2302(b) of title 5, United States Code, is amended by amending the matter following paragraph (12) to read as follows:

''This subsection shall not be construed to authorize the withholding of information from Congress or the taking of any personnel action against an employee who discloses information to Congress. For purposes of paragraph (8), any presumption relating to the performance of a duty by an employee who has authority to take, direct others to take, recommend, or approve any personnel action may be rebutted by substantial evidence. For purposes of paragraph (8), a determination as to whether an employee or applicant reasonably believes that they have disclosed information that evidences any violation of law, rule, regulation, gross mismanagement, a gross waste of funds, an abuse of authority, or a substantial and specific danger to public health or safety shall be made by determining whether a disinterested observer with knowledge of the essential facts known to and readily ascertainable by the employee could reasonably conclude that the actions of the Government evidence such violations, mismanagement, waste, abuse, or danger.''.

(e) PERSONNEL ACTIONS AND PROHIBITED PERSONNEL PRACTICES.—

(1) PERSONNEL ACTION.—Section 2302(a)(2)(A) of title 5, United States Code, is amended—

(A) in clause (x), by striking ''and'' after the semicolon; and

(B) by redesignating clause (xi) as clause (xiv) and inserting after clause (x) the following:

''(xi) the implementation or enforcement of any nondisclosure policy, form, or agreement;

''(xii) a suspension, revocation, or other determination relating to a security clearance or any other access determination by a covered agency;

''(xiii) an investigation, other than any ministerial or nondiscretionary fact finding activities necessary for the agency to perform its mission, of an employee or applicant for employment because of any activity protected under this section; and''

(2) PROHIBITED PERSONNEL PRACTICE.—Section 2302(b) of title 5, United States Code, is amended—

(A) in paragraph (11), by striking ''or'' at the end;

(B) in paragraph (12), by striking the period and inserting a semicolon; and

(C) by inserting after paragraph (12) the following:

''(13) implement or enforce any nondisclosure policy, form, or agreement, if such policy, form, or agreement does not contain the following statement: 'These provisions are consistent with and do not supersede, conflict with, or otherwise alter the employee obligations, rights, or liabilities created by Executive Order No. 12958; section 7211 of title 5, United States Code (governing disclosures to Congress); section 1034 of title 10, United States Code (governing disclosure to Congress by members of the military); section 2302(b)(8) of title 5, United States Code (governing disclosures of illegality, waste, fraud, abuse, or public health or safety threats); the Intelligence Identities Protection Act of 1982 (50 U.S.C. 421 et seq.) (governing disclosures that could expose confidential Government agents); and the statutes which protect against disclosures that could compromise national security, including sections 641, 793, 794, 798, and 952 of title 18, United States Code, and section 4(b) of the Subversive Activities Control Act of 1950 (50 U.S.C. 783(b)). The definitions, requirements, obligations, rights, sanctions, and liabilities created by such Executive order and such statutory provisions are incorporated into this agreement and are controlling'; or

''(14) conduct, or cause to be conducted, an investigation, other than any ministerial or nondiscretionary fact finding activities necessary for the agency to perform its mission, of an employee or applicant for employment because of any activity protected under this section.''.

(f) EXCLUSION OF AGENCIES BY THE PRESIDENT.—Section 2302(a)(2)(C) of title 5, United States Code, is amended by striking clause (ii) and inserting the following:

''(ii)(I) the Federal Bureau of Investigation, the Central Intelligence Agency, the Defense Intelligence Agency, the National Geospatial-Intelligence Agency, the National Security Agency; and

''(II) as determined by the President, any executive agency or unit thereof the principal function of which is the conduct of foreign intelligence or counterintelligence activities, if the determination (as that determination relates to a personnel action) is made before that personnel action; or''.

(g) DISCIPLINARY ACTION.—Section 1215(a)(3) of title 5, United States Code, is amended to read as follows:

''(3)(A) A final order of the Board may impose—

''(i) disciplinary action consisting of removal, reduction in grade, debarment from Federal employment for a period not to exceed 5 years, suspension, or reprimand;

''(ii) an assessment of a civil penalty not to exceed $1,000; or

''(iii) any combination of disciplinary actions described under clause (i) and an assessment described under clause (ii).

''(B) In any case in which the Board finds that an employee has committed a prohibited personnel practice under paragraph (8) or (9) of section 2302(b), the Board shall impose disciplinary action if the Board finds that the activity protected under paragraph (8) or (9) of section 2302(b) was a significant motivating factor, even if other factors also motivated the decision, for the employee's decision to take, fail to take, or threaten to take or fail to take a personnel action, unless that employee demonstrates, by preponderance of evidence, that the employee would have taken, failed to take, or threatened to take or fail to take the same personnel action, in the absence of such protected activity.''.

(h) REMEDIES.—

(1) ATTORNEY FEES.—Section 1204(m)(1) of title 5, United States Code, is amended by striking ''agency involved'' and inserting ''agency where the prevailing party is employed or has applied for employment''.

(2) DAMAGES.—Sections 1214(g)(2) and 1221(g)(1)(A)(ii) of title 5, United States Code, are amended by striking all after ''travel expenses,'' and inserting ''any other reasonable and foreseeable consequential damages, and compensatory damages (including attorney's fees, interest, reasonable expert witness fees, and costs).'' each place it appears.

(i) JUDICIAL REVIEW.—

(1) IN GENERAL.—Section 7703(b)(1) of title 5, United States Code, is amended to read as follows:

''(b)(1)(A) Except as provided in subparagraph (B) and paragraph (2), a petition to review a final order or final decision of the Board shall be filed in the United States Court of Appeals for the Federal Circuit. Notwithstanding any other provision of law, any petition for review must be filed within 60 days after the date the petitioner received notice of the final order or decision of the Board.

''(B) During the 5-year period beginning on the effective date of the Whistleblower Protection Enhancement Act of 2009, a petition to review a final order or final decision of the Board in a case alleging a violation of paragraph (8) or (9) of section 2302(b) shall be filed in the United States Court of Appeals for the Federal Circuit or any court of appeals of competent jurisdiction as provided under subsection (b)(2).''.

(2) REVIEW OBTAINED BY OFFICE OF PERSONNEL MANAGEMENT.—Section 7703(d) of title 5, United States Code, is amended to read as follows:

''(d)(1) Except as provided under paragraph (2), this paragraph shall apply to any review obtained by the Director of the Office of Personnel Management. The Director of the Office of Personnel Management may obtain review of any final order or decision of the Board by filing, within 60 days after the date the Director received notice of the final order or decision of the Board, a petition for judicial review in the United States Court of Appeals for the Federal Circuit if the Director determines, in his discretion, that the Board erred in interpreting a civil service law, rule, or regulation affecting personnel management and that the Board's decision will have a substantial impact on a civil service law, rule, regulation, or policy directive. If the Director did not intervene in a matter before the Board, the Director may not petition for review of a Board decision under this section unless the Director first petitions the Board for a reconsideration of its decision, and such petition is denied. In addition to the named respondent, the Board and all other parties to the proceedings before the Board shall have the right to appear in the proceeding before the Court of Appeals. The granting of the petition for judicial review shall be at the discretion of the Court of Appeals.

''(2) During the 5-year period beginning on the effective date of the Whistleblower Protection Enhancement Act of 2009, this paragraph shall apply to any review relating to

paragraph (8) or (9) of section 2302(b) obtained by the Director of the Office of Personnel Management. The Director of the Office of Personnel Management may obtain review of any final order or decision of the Board by filing, within 60 days after the date the Director received notice of the final order or decision of the Board, a petition for judicial review in the United States Court of Appeals for the Federal Circuit or any court of appeals of competent jurisdiction as provided under subsection (b)(2) if the Director determines, in his discretion, that the Board erred in interpreting paragraph (8) or (9) of section 2302(b). If the Director did not intervene in a matter before the Board, the Director may not petition for review of a Board decision under this section unless the Director first petitions the Board for a reconsideration of its decision, and such petition is denied. In addition to the named respondent, the Board and all other parties to the proceedings before the Board shall have the right to appear in the proceeding before the court of appeals. The granting of the petition for judicial review shall be at the discretion of the Court of Appeals.''.

(j) MERIT SYSTEM PROTECTION BOARD REVIEW OF SECURITY CLEARANCES.—

(1) IN GENERAL.—Chapter 77 of title 5, United States Code, is amended by inserting after section 7702 the following:

''§ 7702a. Actions relating to security clearances

''(a) In any appeal relating to the suspension, revocation, or other determination relating to a security clearance or access determination, the Merit Systems Protection Board or any reviewing court—

''(1) shall determine whether paragraph (8) or (9) of section 2302(b) was violated;

''(2) may not order the President or the designee of the President to restore a security clearance or otherwise reverse a determination of clearance status or reverse an access determination; and

''(3) subject to paragraph (2), may issue declaratory relief and any other appropriate relief.

''(b)(1) If, in any final judgment, the Board or court declares that any suspension, revocation, or other determination with regard to a security clearance or access determination was made in violation of paragraph (8) or (9) of section 2302(b), the affected agency shall conduct a review of that suspension, revocation, access determination, or other determination, giving great weight to the Board or court judgment.

''(2) Not later than 30 days after any Board or court judgment declaring that a security clearance suspension, revocation, access determination, or other determination was made in violation of paragraph (8) or (9) of section 2302(b), the affected agency shall issue an unclassified report to the congressional committees of jurisdiction (with a classified annex if necessary), detailing the circumstances of the agency's security clearance suspension, revocation, other determination, or access determination. A report under this paragraph shall include any proposed agency action with regard to the security clearance or access determination.

''(c) An allegation that a security clearance or access determination was revoked or suspended in retaliation for a protected disclosure shall receive expedited review by the Office of Special Counsel, the Merit Systems Protection Board, and any reviewing court.

''(d) For purposes of this section, corrective action may not be ordered if the agency demonstrates by a preponderance of the evidence that it would have taken the same personnel action in the absence of such disclosure.''.

(2) TECHNICAL AND CONFORMING AMENDMENT.—The table of sections for chapter 77 of title 5, United States Code, is amended by inserting after the item relating to section 7702 the following:

''7702a. Actions relating to security clearances.''.

(k) PROHIBITED PERSONNEL PRACTICES AFFECTING THE TRANSPORTATION SECURITY ADMINISTRATION.—

(1) IN GENERAL.—Chapter 23 of title 5, United States Code, is amended—

(A) by redesignating sections 2304 and 2305 as sections 2305 and 2306, respectively; and

(B) by inserting after section 2303 the following:

''§ 2304. Prohibited personnel practices affecting the Transportation Security Administration

''(a) IN GENERAL.—Notwithstanding any other provision of law, any individual holding or applying for a position within the Transportation Security Administration shall be covered by—

''(1) the provisions of section 2302(b)(1), (8), and (9);

''(2) any provision of law implementing section 2302(b) (1), (8), or (9) by providing any right or remedy available to an employee or applicant for employment in the civil service; and

''(3) any rule or regulation prescribed under any provision of law referred to in paragraph (1) or (2).

''(b) RULE OF CONSTRUCTION.—Nothing in this section shall be construed to affect any rights, apart from those described in subsection (a), to which an individual described in subsection (a) might otherwise be entitled under law.''.

(2) TECHNICAL AND CONFORMING AMENDMENT.—The table of sections for chapter 23 of title 5, United States Code, is amended by striking the items relating to sections 2304 and 2305, respectively, and by inserting the following:

''Sec. 2304. Prohibited personnel practices affecting the Transportation Security Administration.

''Sec. 2305. Responsibility of the Government Accountability Office.

''Sec. 2306. Coordination with certain other provisions of law.''.

(3) EFFECTIVE DATE.—The amendments made by this section shall take effect on the date of enactment of this section.

(l) DISCLOSURE OF CENSORSHIP RELATED TO RESEARCH, ANALYSIS, OR TECHNICAL INFORMATION.—

(1) DEFINITIONS.—In this section—

(A) the term ''applicant'' means an applicant for a covered position;

(B) the term ''censorship related to research, analysis, or technical information'' means any effort to alter, misrepresent, or suppress research, analysis, or technical information;

(C) the term ''covered position'' has the meaning given under section 2302(a)(2)(B) of title 5, United States Code;

(D) the term ''employee'' means an employee in a covered position; and

(E) the term ''disclosure'' has the meaning given under section 2302(a)(2)(D) of title 5, United States Code.

(2) PROTECTED DISCLOSURE.—

(A) IN GENERAL.—Any disclosure of information by an employee or applicant for employment that the employee or applicant reasonably believes is evidence of censorship related to research, analysis, or technical information shall come within the protections of section 2302(b)(8)(A) of title 5, United States Code, if—

(i) the employee or applicant reasonably believes that the censorship related to research, analysis, or technical information is or will cause—

(I) any violation of law, rule, or regulation; or

(II) gross mismanagement, a gross waste of funds, an abuse of authority, or a substantial and specific danger to public health or safety; and

(ii) the disclosure and information satisfy the conditions stated in the matter following clause (ii) of section 2302(b)(8)(A) of title 5, United States Code; and

(iii) shall come within the protections of section 2302(b)(8)(B) of title 5, United States Code, if—

(I) the conditions under clause (i) of this subparagraph are satisfied; and

(II) the disclosure is made to an individual referred to in the matter preceding clause (i) of section 2302(b)(8)(B) of title 5, United States Code, for the receipt of disclosures.

(B) APPLICATION.—Paragraph (1) shall apply to any disclosure of information by an employee or applicant without restriction to time, place, form, motive, context, forum, or prior disclosure made to any person by an employee or applicant, including a disclosure made in the ordinary course of an employee's duties.

(C) RULE OF CONSTRUCTION.—Nothing in this section shall be construed to imply any limitation on the protections of employees and applicants afforded by any other provision of law, including protections with respect to any disclosure of information believed to be evidence of censorship related to research, analysis, or technical information.

(m) CLARIFICATION OF WHISTLEBLOWER RIGHTS FOR CRITICAL INFRASTRUCTURE INFORMATION.—Section 214(c) of the Homeland Security Act of 2002 (6 U.S.C. 133(c)) is amended by adding at the end the following: ''For purposes of this section a permissible use of independently obtained information includes the disclosure of such information under section 2302(b)(8) of title 5, United States Code.''.

(n) ADVISING EMPLOYEES OF RIGHTS.—Section 2302(c) of title 5, United States Code, is amended by inserting '', including how to make a lawful disclosure of information that is specifically required by law or Executive order to be kept secret in the interest of national defense or the conduct of foreign affairs to the Special Counsel, the Inspector General of an agency, Congress, or other agency employee designated to receive such disclosures'' after ''chapter 12 of this title''.

(o) SPECIAL COUNSEL AMICUS CURIAE APPEARANCE.—Section 1212 of title 5, United States Code, is amended by adding at the end the following:

''(h)(1) The Special Counsel is authorized to appear as amicus curiae in any action brought in a court of the United States related to any civil action brought in connection with section 2302(b) (8) or (9), or subchapter III of chapter 73, or as otherwise authorized by law. In any such action, the Special Counsel is authorized to present the views of the Special Counsel with respect to compliance with section 2302(b) (8) or (9) or subchapter III of chapter 73 and the impact court decisions would have on the enforcement of such provisions of law.

''(2) A court of the United States shall grant the application of the Special Counsel to appear in any such action for the purposes described in subsection (a).''.

(p) SCOPE OF DUE PROCESS.—

(1) SPECIAL COUNSEL.—Section 1214(b)(4)(B)(ii) of title 5, United States Code, is amended by inserting '', after a finding that a protected disclosure was a contributing factor,'' after ''ordered if''.

(2) INDIVIDUAL ACTION.—Section 1221(e)(2) of title 5, United States Code, is amended by inserting '', after a finding that a protected disclosure was a contributing factor,'' after ''ordered if''.

(q) NONDISCLOSURE POLICIES, FORMS, AND AGREEMENTS.—

(1) IN GENERAL.—

(A) REQUIREMENT.—Each agreement in Standard Forms 312 and 4414 of the Government and any other nondisclosure policy, form, or agreement of the Government shall contain the following statement: ''These restrictions are consistent with and do not supersede, conflict with, or otherwise alter the employee obligations, rights, or liabilities created by Executive Order No. 12958; section 7211 of title 5, United States Code (governing disclosures to Congress); section 1034 of title 10, United States Code (governing disclosure to Congress by members of the military); section 2302(b)(8) of title 5, United States Code (governing disclosures of illegality, waste, fraud, abuse or public health or safety threats); the Intelligence Identities Protection Act of 1982 (50 U.S.C. 421 et seq.) (governing disclosures that could expose confidential Government agents); and the statutes which protect against disclosure that may compromise the national security, including sections 641, 793, 794, 798, and 952 of title 18, United States Code, and section 4(b) of the Subversive Activities Act of 1950 (50 U.S.C. 783(b)). The definitions, requirements, obligations, rights, sanctions, and liabilities created by such Executive order and such statutory provisions are incorporated into this agreement and are controlling.''.

(B) ENFORCEABILITY.—Any nondisclosure policy, form, or agreement described under subparagraph (A) that does not contain the statement required under subparagraph (A) may not be implemented or enforced to the extent such policy, form, or agreement is inconsistent with that statement.

(2) PERSONS OTHER THAN GOVERNMENT EMPLOYEES.—Notwithstanding paragraph (1), a nondisclosure policy, form, or agreement that is to be executed by a person connected with the conduct of an intelligence or intelligence-related activity, other than an employee or officer of the United States Government, may contain provisions appropriate to the particular activity for which such document is to be used. Such form or agreement shall, at a minimum, require that the person will not disclose any classified information received in the course of such activity unless specifically authorized to do so by the United States Government. Such nondisclosure forms shall also make it clear that such forms do not bar disclosures to Congress or to an authorized official of an executive agency or the Department of Justice that are essential to reporting a substantial violation of law.

(r) REPORTING REQUIREMENTS.—

(1) GOVERNMENT ACCOUNTABILITY OFFICE.—

(A) IN GENERAL.—

(i) REPORT.—Not later than 40 months after the date of enactment of this Act, the Comptroller General shall submit a report to the Committee on Homeland Security and Governmental Affairs of the Senate and the Committee on Oversight and Government Reform of the House of Representatives on the implementation of this Act.

(ii) CONTENTS.—The report under this paragraph shall include—

(I) an analysis of any changes in the number of cases filed with the United States Merit Systems Protection Board alleging violations of section 2302(b)(8) or (9) of title 5, United States Code, since the effective date of the Act;

(II) the outcome of the cases described under clause (i), including whether or not the United States Merit Systems Protection Board, the Federal Circuit Court of Appeals, or any other court determined the allegations to be frivolous or malicious; and

(III) any other matter as determined by the Comptroller General.

(B) STUDY ON REVOCATION OF SECURITY CLEARANCES.—

(i) STUDY.—The Comptroller General shall conduct a study of security clearance revocations of Federal employees at a select sample of executive branch agencies. The study shall consist of an examination of the number of security clearances revoked, the process employed by each agency in revoking a clearance, the pay and employment status of agency employees during the revocation process, how often such revocations result in termination of employment or reassignment, how often such revocations are based on an improper disclosure of information, and such other factors the Comptroller General deems appropriate.

(ii) REPORT.—Not later than 18 months after the date of enactment of this Act, the Comptroller General shall submit to the Committee on Homeland Security and Governmental Affairs of the Senate and the Committee on Oversight and Government Reform of the House of Representatives a report on the results of the study required under this subparagraph.

(2) MERIT SYSTEMS PROTECTION BOARD.—

(A) IN GENERAL.—Each report submitted annually by the Merit Systems Protection Board under section 1116 of title 31, United States Code, shall, with respect to the period covered by such report, include as an addendum the following:

(i) Information relating to the outcome of cases decided during the applicable year of the report in which violations of section 2302(b)(8) or (9) of title 5, United States Code, were alleged.

(ii) The number of such cases filed in the regional and field offices, the number of petitions for review filed in such cases, and the outcomes of such cases.

(B) FIRST REPORT.—The first report described under subparagraph (A) submitted after the date of enactment of this Act shall include an addendum required under that subparagraph that covers the period beginning on January 1, 2009 through the end of the fiscal year 2009.

(s) EFFECTIVE DATE.—This Act shall take effect 30 days after the date of enactment of this Act.

By Mr. NELSON, of Florida:

S. 373. A bill to amend title 18, United States Code, to include constrictor snakes of the species Python genera as an injurious animal; to the Committee on Environment and Public Works.

Mr. NELSON of Florida. Mr. President, I rise today to discuss exotic pythons and the devastating impact they are having on wildlife in my home state. To combat this deadly nonnative nuisance, I am also filing a bill that will ban the interstate commerce and importation of these snakes.

Pythons were first discovered in the Everglades in the mid–1990s, and now have a rapidly-growing breeding population within the boundary of Everglades National Park. They impact almost seventy endangered species living in the Everglades and threaten to upset the natural balance that we are spending billions of dollars to restore. When I toured the Everglades with Environment and Public Works Committee Chairman BARBARA BOXER, we witnessed firsthand the damage pythons are causing, and the efforts researchers are making to eradicate them from the wild.

These snakes were brought to Florida to be sold as pets, and were introduced into the wild by owners who could no longer handle them. They eat animals ranging from songbirds to white ibises, as well as endangered and threatened species such as the Key Largo woodrat. Pythons can grow to be 23 feet long and weigh up to 200 pounds, and there is currently no effective way of eradicating them in the wild.

They can consume animals many times their size, and recently, researchers also found cougar parts in the stomachs of captured pythons. This development could signal a new threat to the endangered Florida panther, which we have been working so hard to save.

Python populations have also been discovered in Big Cypress National Preserve to the north, Miami's water management areas to the northeast, Key Largo to the southeast, and many state parks, municipalities, and public and private lands in the region.

Because climate range projections from the U.S. Geological Survey show that pythons may soon expand their range to include much of the southern third of the United States, getting their populations under control is even more pressing.

In the last year, the State of Florida has taken some actions to address the problems created by owners who release their pythons into the wild, and I applaud these efforts. The State now requires owners of animals they call ''Reptiles of Concern''—a category that includes two species besides pythons—not only to obtain permits for their animals, but also to implant a tracking microchip in larger pythons.

I believe federal action is also needed. That is why today I am introducing a bill that would amend the Lacey Act to ban the importation and interstate commerce of the python. This step is needed to reduce the number of pythons released into the wild by pet owners who don't understand the responsibility caring for a python entails. In 2007, preeminent environmentalist and former assistant secretary of the Interior Nathaniel Reed wrote, ''The dramatic increase in the number of snakes in the Park and Big Cypress call into question why it has

taken so long for the Service to utilize its powers under the Lacey Act to prevent importation of the snake into an ecosystem where escapees and rejects have built a sustainable population.''

If we do not take action now, we will let python populations in Florida continue to grow and further ravage the already-fragile Everglades, as well as risk letting them spread throughout the Southern portion of the United States.

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. 373

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

SECTION 1. IMPORTATION OR SHIPMENT OF INJURIOUS SPECIES.

Section 42(a)(1) of title 18, United States Code, is amended in the first sentence by inserting ''; of the constrictor snake of the species Python genera'' after ''polymorpha''.

SUBMITTED RESOLUTIONS

SENATE RESOLUTION 26—RECOGNIZING AND HONORING RALPH WILSON, JR. AND BRUCE SMITH ON BEING SELECTED TO THE 2009 PRO FOOTBALL HALL OF FAME CLASS

Mr. SCHUMER (for himself and Mrs. GILLIBRAND) submitted the following resolution; which was referred to the Committee on the Judiciary:

S. RES. 26

Whereas Ralph Wilson, Jr. was born in Columbus, Ohio on October 17, 1918 and grew up in Detroit, Michigan;

Whereas Ralph Wilson, Jr. is a graduate of the University of Virginia and attended the University of Michigan Law School;

Whereas Ralph Wilson, Jr. bravely served in the United States Navy during World War II;

Whereas Ralph Wilson, Jr.'s first involvement in professional football was as a minority owner of the National Football League's (NFL) Detroit Lions;

Whereas on October 28, 1959, Ralph Wilson, Jr. created the Buffalo Bills, the seventh American Football League (AFL) franchise;

Whereas under Ralph Wilson, Jr.'s leadership and with the legendary players Jack Kemp, Cookie Gilchrist, Billy Shaw, and Tom Sestak, the Buffalo Bills were AFL champions in 1964 and 1965;

Whereas Ralph Wilson, Jr., head Coach Marv Levy, and outstanding talented players, including Jim Kelly, Bruce Smith, Thurman Thomas, and Andre Reed, led the Buffalo Bills to Super Bowls XXV, XXVI, XXVII, and XXVIII;

Whereas in 1998, the Buffalo Bill's home stadium was named ''Ralph Wilson Stadium'' to honor the team's owner;

Whereas at 90 years old, Ralph Wilson, Jr. is still a champion for his team;

Whereas Bruce Smith was born in Norfolk, Virginia on June 18, 1963;

Whereas Bruce Smith attended Virginia Polytechnic Institute and State University and is one of the most-celebrated football players of his alma mater, having been nicknamed ''The Sack Man'';

Whereas Bruce Smith was drafted to the Buffalo Bills in 1985 as the number one draft pick overall;

Whereas Bruce Smith was a member of the Buffalo Bills for Super Bowls XXV, XXVI, XXVII, and XXVIII;

Whereas Bruce Smith was first selected to play in the Pro Bowl in 1987, and was selected 10 additional years during which he was a Buffalo Bill;

Whereas Bruce Smith boasts numerous professional football recognitions, including Pro Bowl Most Valuable Player, Associated Press NFL Defensive Player of the Year, Newspaper Enterprise Association Defensive Player of the Year, United Press International Defensive Player of the Year, and American Football Conference (AFC) Defensive Player of the Year; and

Whereas Bruce Smith completed his career as a Washington Redskin in 2003 after 19 seasons and a record 200 sacks: Now, therefore, be it

Resolved, That the Senate recognizes and honors Ralph Wilson, Jr. and Bruce Smith on being selected to the 2009 Pro Football Hall of Fame class.

SENATE CONCURRENT RESOLUTION 4—CALLING ON THE PRESIDENT AND THE ALLIES OF THE UNITED STATES TO RAISE THE CASE OF ROBERT LEVINSON WITH OFFICIALS OF THE GOVERNMENT OF IRAN AT EVERY LEVEL AND OPPORTUNITY, AND URGING OFFICIALS OF THE GOVERNMENT OF IRAN TO FULFILL THEIR PROMISES OF ASSISTANCE TO THE FAMILY OF ROBERT LEVINSON AND TO SHARE INFORMATION ON THE INVESTIGATION INTO THE DISAPPEARANCE OF ROBERT LEVINSON WITH THE FEDERAL BUREAU OF INVESTIGATION

Mr. NELSON of Florida (for himself, Mr. VOINOVICH, Mr. BAYH, Mr. MARTINEZ, Mr. KYL, and Mr. MENENDEZ) submitted the following concurrent resolution; which was referred to the Committee on Foreign Relations:

S. CON. RES. 4

Whereas United States citizen Robert Levinson is a retired agent of the Federal Bureau of Investigation, a resident of Florida, the husband of Christine Levinson, and father of their 7 children;

Whereas Robert Levinson traveled from Dubai to Kish Island, Iran, on March 8, 2007;

Whereas, after traveling to Kish Island and checking into the Hotel Maryam, he disappeared on March 9, 2007;

Whereas neither his family nor the United States Government has received further information on his fate or whereabouts;

Whereas March 9, 2009, marks the second anniversary of the disappearance of Robert Levinson;

Whereas the Government of Switzerland, which has served as Protecting Power for the United States in the Islamic Republic of Iran in the absence of diplomatic relations between the United States Government and the Government of Iran since 1980, has continuously pressed the Government of Iran on the case of Robert Levinson and lent vital assistance and support to the Levinson family during their December 2007 visit to Iran;

Whereas officials of the Government of Iran promised their continued assistance to the relatives of Robert Levinson during the visit of the family to the Islamic Republic of Iran in December 2007; and

Whereas the President of the Islamic Republic of Iran, Mahmoud Ahmadinejad, stated during an interview with NBC News broadcast on July 28, 2008, that officials of the Government of Iran were willing to cooperate with the Federal Bureau of Investigation in the search for Robert Levinson: Now, therefore, be it

Resolved by the Senate (the House of Representatives concurring), That Congress—

(1) commends the Embassy of Switzerland in Tehran and the Government of Switzerland for the ongoing assistance to the United States Government and to the family of Robert Levinson, particularly during the visit by Christine Levinson and other relatives to Iran in December 2007;

(2) expresses appreciation for efforts by Iranian officials to ensure the safety of the family of Robert Levinson during their December 2007 visit to Iran, as well as for the promise of continued assistance;

(3) urges the Government of Iran, as a humanitarian gesture, to intensify its cooperation on the case of Robert Levinson with the Embassy of Switzerland in Tehran and to share the results of its investigation into the disappearance of Robert Levinson with the Federal Bureau of Investigation;

(4) urges the President and the allies of the United States to engage with officials of the Government of Iran to raise the case of Robert Levinson at every opportunity, notwithstanding other serious disagreements the United States Government has had with the Government of Iran on a broad array of issues, including human rights, the nuclear program of Iran, the Middle East peace process, regional stability, and international terrorism; and

(5) expresses sympathy to the family of Robert Levinson during this trying period.

Mr. NELSON of Florida. Mr. President, since we have a moment, I will tell you about S. Con. Res. 4. Two years ago, an American went to Kish Island, which is part of Iran. The Iranian island is in the Persian Gulf and a visa is not required to get there. We have the records that Bob Levinson, a retired FBI agent, checked out of his hotel, which subsequently has been confirmed by the taxi driver who drove him to the airport and deposited him. At that point, Bob Levinson disappeared and has left a wife and seven children. They happen to reside in the State of Florida. But it doesn't make any difference where the State is. We have a number of Senators who have joined with me on this resolution to keep up the pressure.

I want you to know that under the reasonable man test, all of the evidence we have suggests that Bob Levinson is in Iran and is being held against his will. First, there was an Iranian press story about 6 weeks after Levinson's disappearance that indicated he would be released, that he was in custody. This report comes from PRESS TV, which is an Iranian Government press operation.