

SUBCOMMITTEE ON CONSTITUTION, FEDERALISM,  
AND PROPERTY RIGHTS

Mr. GREGG. Mr. President, I ask unanimous consent that the Subcommittee on Constitution, Federalism, and Property Rights, of the Senate Committee on the Judiciary, be authorized to meet during the session of the Senate on Tuesday, July 29, 1997, at 2 p.m., to hold a hearing in room 226, Senate Dirksen Building, on: "Judicial Activism: Potential Responses."

The PRESIDING OFFICER. Without objection, it is so ordered.

## ADDITIONAL STATEMENTS

PLANT PATENT AMENDMENTS  
ACT OF 1997

• Mr. SMITH of Oregon. Mr. President, yesterday I introduced a bill, S. 1072, that corrects an unintended loophole in the Plant Patent Act of 1930 dealing with the coverage of plant parts. The 1930 act covers the whole plant but did not address plant parts, resulting in a loophole whereby some growers, particularly in foreign nations that do not have plant breeders' rights laws, are reproducing U.S. patent-protected varieties without authorization. They then export the harvested materials—plant parts—such as flowers and fruits, to the United States. The loophole has been created by new production and transportation capabilities unforeseen 67 years ago.

As a result, American plant breeders are losing royalty income that supports continued research and breeding of new and improved varieties. Domestic growers who are paying legitimate royalties are also finding themselves at an unfair disadvantage to foreign growers producing patented varieties illegally.

The Plant Patent Act of 1930 has historically offered a strong incentive for research and breeding activities, which is the foundation for a progressive and growing U.S. horticultural industry.

This legislation amends the Plant Patent Act to expressly cover plants and plant parts by inserting at the end of 35 U.S.C. 163, the words "or any parts thereof." This solution provides relief to U.S. breeders and growers, and would help ensure that the United States remains an international leader in the development of new and useful plant varieties. It will enable plant and patent holders the opportunity to protect their patent rights and continue investing in research and development. S. 1072 is also consistent with the 1991 International Union for the Production of New Varieties of Plants, which extends plant breeders' rights protection to harvested material.

Mr. President, I ask that the text of the legislation be printed in the RECORD.

The text of the bill follows:

S. 1072

*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 "Plant Patent Amendment Act of 1997".

## SEC. 2. FINDINGS AND PURPOSES.

(a) FINDINGS.—The Congress makes the following findings:

(1) The protection provided by plant patents under title 35, United States Code, dating back to 1930, has historically benefited American agriculture and horticulture and the public by providing an incentive for breeders to develop new plant varieties.

(2) Domestic and foreign agricultural trade is rapidly expanding and is very different from the trade of the past. An unforeseen ambiguity in the provisions of title 35, United States Code, is undermining the orderly collection of royalties due breeders holding United States plant patents.

(3) Plant parts produced from plants protected by United States plant patents are being taken from illegally reproduced plants and traded in United States markets to the detriment of plant patent holders.

(4) Resulting lost royalty income inhibits investment in domestic research and breeding activities associated with a wide variety of crops—an area where the United States has historically enjoyed a strong international position. Such research is the foundation of a strong horticultural industry.

(5) Infringers producing such plant parts from unauthorized plants enjoy an unfair competitive advantage over producers who pay royalties on varieties protected by United States plant patents.

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

(1) to clearly and explicitly provide that title 35, United States Code, protects the owner of a plant patent against the unauthorized sale of plant parts taken from plants illegally reproduced;

(2) to make the protections provided under such title more consistent with those provided breeders of sexually reproduced plants under the Plant Variety Protection Act (7 U.S.C. 2321 et. seq.), as amended by the plant Variety Protection Act Amendments of 1994 (Public Law 103-349); and

(3) to strengthen the ability of United States plant patent holders to enforce their patent rights with regard to importation of plant parts produced from plants protected by United States plant patents, which are propagated without the authorization of the patent holder.

## SEC. 3. AMENDMENT TO TITLE 35, UNITED STATES CODE.

(a) RIGHTS IN PLANT PATENTS.—Section 163 of title 35, United States Code, is amended to read as follows:

## "§ 163. Grant

"In the case of a plant patent, the grant shall include the right to exclude others from asexually reproducing the plant, and from using, offering for sale, or selling the plant so reproduced, or any of its parts, throughout the United States, or from importing the plant so reproduced, or any parts thereof, into the United States."

(b) EFFECTIVE DATE.—The amendment made by subsection (a) shall apply to any plant patent issued on or after the date of the enactment of this Act. •

WIPO IMPLEMENTING  
LEGISLATION

• Mr. LEAHY. Mr. President, yesterday, the administration transmitted its legislative proposal for implementing the two new treaties adopted in December 1996 by the World Intellectual Property Organization [WIPO]. Over the past few months, I have spoken and written to Secretary Daley of the Department of Commerce urging him to transmit this proposal without delay. The legislative package we received yesterday is an excellent start for moving forward. I commend the ad-

ministration, Secretary Daley and, in particular, Assistant Secretary Bruce Lehman of the Patent and Trademark Office for their hard work on this proposal.

I understand that the administration's proposal will be introduced in the House of Representatives today. Along with Senator HATCH, I am reviewing the proposal. I hope we will be able to introduce the legislation this week so that we can take this matter up for hearings and further deliberation and action promptly when we return in September. •

## JIM GAUPP

• Mr. FAIRCLOTH. Mr. President, Jim Gaupp was a fine American whose life touched many people. He was devoted to his family, and committed to his community. The following is an excerpt from the program at Jim's funeral, held at the Pinecrest Presbyterian Church in Hendersonville, NC:

## PSALM 121

I will lift up mine eyes unto the hills, from whence cometh my help.  
My help cometh from the Lord, which made heaven and earth.  
He will not suffer thy foot to be moved; he that keepeth thee will not slumber.  
Behold, he that keepeth Israel shall neither slumber nor sleep.  
The Lord is thy keeper: the Lord is thy shade upon thy right hand.  
The sun shall not smite thee by day nor the moon by night.  
The Lord shall preserve thee from all evil; he shall preserve thy soul.  
The Lord shall preserve thy going out and thy coming in from this time forth, and even for evermore.

James Louis Gaupp was born in Elk City, OK. In time, Jim moved to Columbus, OH, where he worked for Williams & Co., the metals warehouse. During his 47 years with Williams, Jim worked his way through the ranks and retired as a district manager and vice president. Jim Gaupp's commitment was to be a "Christian businessman and father."

In Columbus, OH, Jim Gaupp was very active in community service. He was very active in his church, in the chamber of commerce, and in the Kiwanis Club.

Jim and Betty Gaupp moved to Hendersonville in 1982, and quickly became vital parts of the Pinecrest Church. At Pinecrest, Jim served as an elder, Sunday school teacher, and faithful member.

In the Kiwanis Club of Hendersonville, Jim Gaupp was faithful; 51 years of perfect attendance at various Kiwanis Clubs was a record attained by Jim.

Jim Gaupp was an outstanding Christian gentleman. Jim was an ardent student of the Bible—entrusting large portions of Scripture to memory. Jim was a great man of prayer. As much as anything else, Jim Gaupp was a great example and model for the sake of Christ

in our midst. In many ways, Jim Gaupp will be missed.

Jim Gaupp is survived by his devoted wife, Betty, two daughters, one son, and several grandchildren.

Jim's life was an example to all, and he deserves a great deal of recognition. He has enriched our lives with his many contributions to our community. Jim will certainly be missed. ●

#### A TRIBUTE TO JERI WARE

● Mrs. MURRAY. Mr. President, Washington State lost a visionary leader, a passionate advocate, and a remarkable woman with the passing of Jerline Ware. As a citizen activist and as a public servant, Jeri Ware worked tirelessly for social justice and to ensure a brighter future for our community's children.

Jeri Ware may best be remembered as the chairwoman of the Seattle Human Rights Commission. This position gave her the opportunity to do in an official capacity what she had done her entire life: fight against discrimination and for equality and human rights. She never gave up believing in a just society and never shied away from speaking out for those who had been wronged. Just last December, the Seattle Human Rights Commission honored Jeri for her tireless commitment and dedication.

Jeri's other passion was our community's young people. She recognized that the future well-being of our community depended on our having a shared sense of responsibility for all our children and giving them the best possible start in life. She put this conviction into action by working in the tutorial program at the University of Washington and as a parent coordinator at Seattle's Leschi School.

We will miss not only Jeri Ware the activist and community leader, but also Jeri Ware the friend. She was a woman who was always willing to open her heart and home.

Jeri leaves her husband of 49 years, John, sons Anthony Muhammed and John Ware, daughters Joan Ware and Falicia Green, six grandchildren and two great-grandchildren; to whom our thoughts go out.

Jeri Ware's passing at the all-too-young age of 73 leaves a great void. However, her courage, commitment and unending faith in a just society will continue to be an inspiration to all those who share her vision. ●

#### GLOBAL CLIMATE CHANGE

● Mr. DORGAN. Mr. President, our Nation has an obligation to its citizens and to the world community to be a leader in working toward improvement of the global environment. Coming from an agricultural State, I am particularly concerned about the potential impacts of global climate changes on our ability to produce the food that is so vitally needed, both at home and abroad. However, if we are going to be

effective in achieving our goals for a better global environment, we not only have to do what is necessary to reduce emissions here in our own country, we must also take the lead in negotiating agreements that will require the reduction of greenhouse gases in other countries around the world.

Frankly, I am deeply concerned over the negotiations related to the United Nations Framework Convention on Climate Change in which the United States and other countries are discussing the reduction of the emission of greenhouse gases. These negotiations are currently headed in a direction that will ask those who have already made great progress in reducing emissions to reduce them even further, while at the same time allowing those who have made no serious attempt to reduce the emission of greenhouse gases to do virtually nothing to comply.

I'm proud to say that my State, North Dakota, was the first State in America to comply with the Clean Air Act. We have taken the responsibility of reducing emissions in my home State and throughout these United States very seriously. Even though we have doubled our use of energy in the past 20 years in this country, we now have cleaner air. Have we done all we could? No, we can do more and we will. But, everybody needs to do their fair share.

The question in these negotiations is an issue of fairness. Is it fair to our economy to impose stringent controls that will cost substantial money to get a small margin of additional environmental benefit, when other have not even really started? Is it fair when we have already made significant strides in reducing emissions to exempt other countries, whose economies are competing with ours, from any meaningful compliance?

In recent trips to China, I have observed the degradation of that country's air shed because of the lack of meaningful laws or enforcement restricting the emissions of greenhouse gases. Yet, these negotiations would effectively allow China, India and other countries in similar situations a free ride. They would have virtually no significant requirements to clean up their act in any reasonable time period.

I refuse to accept negotiations that impose a burden on ourselves that we are unwilling to require of others, particularly when we have made progress and others have not. This reminds me of our negotiations on international trade in which we unilaterally have opened our markets to foreign goods, while allowing foreign markets to remain closed to our goods. While we bear the burden, others reap the profits. Unfortunately, we have not been willing to require other countries to take the reciprocal actions to achieve fair trade.

I see exactly the same mentality in these negotiations on the reduction of air emissions. Our country once again

appears willing to impose burdens on our own economy that we will not require of others. Even if we were not competing with these other economies, this would not make good sense.

I want to make it clear that I think our country has done the right thing by insisting that part of the costs of producing a product includes the costs associated with reducing pollution and preventing the degradation of our air or water. I am proud that our country has been a leader on these environmental issues.

As we move forward in establishing and developing compliance with global environmental standards that will protect the Earth's environment, we must do so in a fair and evenhanded way that does not put America at a significant disadvantage with its trading partners.

For example, if we are competing with the Chinese in the production of goods and we are required to assume a burden in compliance with emissions standards that the Chinese are not required to follow, then we are imposing a penalty of fewer jobs and slower economic growth on our own economy. I think that's unfair to this country.

The administration should not mistake the concern that we have in Congress about this issue as one of weakness on environmental issues. That is simply not the case. In fact, the Congress has demonstrated its strong support for environmental cleanup for more than two decades.

If the administration intends to negotiate global requirements for environmental compliance, then this Congress will insist that these requirements are fair. We will insist that the negotiations do not impose burdens on our own country, while other countries are exempted from their enforcement responsibilities. This is a matter of fairness and doing what is right for our Nation and our planet. ●

#### THE 85TH ANNIVERSARY OF CHESTER HOSE COMPANY

● Mr. LIEBERMAN. Mr. President, I rise today to honor the Chester Hose Company on their 85th anniversary. On September 7 they will be honored by the town of Chester and the Chester Historical Society with a Chester Hose Company Day celebration.

For the past 85 years this dedicated group of men and women have strived to ensure the safety of the community of Chester, CT. Their dedication is evident in their unshakable commitment to self-sacrifice for the security of their friends, families, and neighbors. Indeed, some have given the ultimate sacrifice, giving their lives while trying to protect their fellow citizens.

This organization's dedication and commitment to the town of Chester can be seen not only through the company's actions, but also in the great confidence and respect the residents of Chester place in these men and women. These are ordinary citizens asked to