

Transportation Equity Act for the 21st Century.

S. 1918

At the request of Ms. COLLINS, the name of the Senator from Colorado (Mr. ALLARD) was added as a cosponsor of S. 1918, a bill to expand the teacher loan forgiveness programs under the guaranteed and direct student loan programs for highly qualified teachers of mathematics, science, and special education, and for other purposes.

S. 2001

At the request of Mr. CAMPBELL, the name of the Senator from Illinois (Mr. DURBIN) was added as a cosponsor of S. 2001, a bill to require the Secretary of Defense to report to Congress regarding the requirements applicable to the inscription of veterans' names on the memorial wall of the Vietnam Veterans Memorial.

S. 2015

At the request of Mr. SMITH of New Hampshire, the name of the Senator from Colorado (Mr. CAMPBELL) was added as a cosponsor of S. 2015, a bill to exempt certain users of fee demonstration areas from fees imposed under the recreation fee demonstration program.

S. 2027

At the request of Mr. DURBIN, the name of the Senator from Vermont (Mr. LEAHY) was added as a cosponsor of S. 2027, a bill to implement effective measures to stop trade in conflict diamonds, and for other purposes.

S. 2039

At the request of Mr. DURBIN, the names of the Senator from Wisconsin (Mr. KOHL) and the Senator from Maryland (Ms. MIKULSKI) were added as cosponsors of S. 2039, a bill to expand aviation capacity in the Chicago area.

S. 2051

At the request of Mr. REID, the name of the Senator from South Dakota (Mr. JOHNSON) was added as a cosponsor of S. 2051, a bill to remove a condition preventing authority for concurrent receipt of military retired pay and veterans' disability compensation from taking affect, and for other purposes.

STATEMENTS ON INTRODUCED BILLS AND JOINT RESOLUTIONS

By Mrs. CARNAHAN (for herself, Ms. MIKULSKI, and Mr. JEFFORDS):

S. 2122. A bill to provide for an increase in funding for research on uterine fibroids through the National Institutes of Health, and to provide for a program to provide information and education to the public on such fibroids; to the Committee on Health, Education, Labor and Pensions.

Mrs. CARNAHAN. Madam President, today I am proud to introduce the Uterine Fibroids Research and Education Act 2002. This bipartisan legislation addresses a serious health problem that affects women during their reproductive years. At least twenty to thirty percent of all women aged 35 and

older have symptomatic fibroids that require treatment. This number rises to approximately fifty percent for African-American women.

I am pleased that two of my colleagues, Senator JEFFORDS and Senator MIKULSKI, are joining me in sponsoring this legislation. Both are strong advocates for women's health.

Uterine fibroids are benign tumors that impact the reproductive health of women, particularly minority women. If they go undetected or untreated, uterine fibroids can lead to childbirth complications or infertility, among other things.

For those who do seek treatment, the option prescribed most often is a hysterectomy. Uterine fibroids are the top reason for hysterectomies currently being performed in this country. A hysterectomy is a major operation—the average recovery time is six weeks. This is just the physical impact, the emotional impact lasts much longer.

We need to invest additional resources in research, so that there are more treatment options for women, including options less drastic than a hysterectomy. We also need to increase awareness of uterine fibroids, so that more women will recognize the symptoms and seek treatment.

To accomplish both of these goals we need a sustained Federal commitment to better understanding uterine fibroids. That is why I am introducing this legislation today.

My bill has two components. First, it authorizes \$10 million for the National Institutes of Health, (NIH), for each of our years to conduct research on uterine fibroids.

Second, the bill supports a public awareness campaign. It calls on the Secretary of the U.S. Department of Health and Human Services to carry out a program to provide information and education to the public regarding uterine fibroids. The content of the program shall include information on the incidence and prevalence of uterine fibroids and the elevated risk for minority women. The Secretary shall have the authority to carry out the program either directly or through contract.

This legislation will make a meaningful difference in the lives of women and their families across this country. I encourage the entire Senate to support this important legislation.

By Mr. INOUE:

S. 2127. A bill for the relief of the Pottawatomi Nation in Canada for settlement of certain claims against the United States; to the Committee on the Judiciary.

Mr. INOUE. Madam President, almost seven years ago, I stood before you to submit a resolution "to provide an opportunity for the Pottawatomi Nation in Canada to have the merits of their claims against the United States determined by the United States Court of Federal Claims."

That bill was submitted as Senate Resolution 223, which referred the

Pottawatomi's claim to the Chief Judge of the U.S. Court of Federal Claims and required the Chief Judge to report back to the Senate and provide sufficient findings of fact and conclusions of law to enable the Congress to determine whether the claim of the Pottawatomi Nation in Canada is legal or equitable in nature, and the amount of damages, if any, which may be legally or equitably due from the United States.

Earlier this year, the Chief Judge of the Court of Federal Claims reported back that the Pottawatomi Nation in Canada has a legitimate and credible legal claim. Thereafter, by settlement stipulation, the United States has taken the position that it would be "fair, just and equitable" to settle the claims of the Pottawatomi Nation in Canada for the sum of \$1,830,000. This settlement amount was reached by the parties after seven years of extensive, fact-intensive litigation. Independently, the court concluded that the settlement amount is "not a gratuity" and that the "settlement was predicated on a credible legal claim." *Pottawatomi Nation in Canada, et al. v. United States*, Cong. Ref. 94-1037X at 28 (Ct. Fed. Cl., September 15, 2000) (Report of Hearing Officer).

The bill I introduce today is to authorize the appropriation of those funds that the United States has concluded would be "fair, just and equitable" to satisfy this legal claim. If enacted, this bill will finally achieve a measure of justice for a tribal nation that has for far too long been denied.

For the information of our colleagues, this is the historical background that informs the underlying legal claim of the Canadian Pottawatomi.

The members of the Pottawatomi Nation in Canada are one of the descendant groups, successors-in-interest, of the historical Pottawatomi Nation and their claim originates in the latter part of the 18th Century. The historical Pottawatomi Nation was aboriginal to the United States. They occupied and possessed a vast expanse in what is now the States of Ohio, Michigan, Indiana, Illinois, and Wisconsin. From 1795 to 1833, the United States annexed most of the traditional land of the Pottawatomi Nation through a series of treaties of cession, many of these cessions were made under extreme duress and the threat of military action. In exchange, the Pottawatomis were repeatedly made promises that the remainder of their lands would be secure and, in addition, that the United States would pay certain annuities to the Pottawatomi.

In 1829, the United States formally adopted a Federal policy of removal, an effort to remove all Indian tribes from their traditional lands east of the Mississippi River to the west. As part of that effort, the government increasingly pressured the Pottawatomis to cede the remainder of their traditional lands, some five millions acres in and

around the city of Chicago and remove themselves west. For years, the Pottawatomis steadfastly refused to cede the remainder of their tribal territory. Then in 1833, the United States, pressed by settlers seeking more land, sent a Treaty Commission to the Pottawatomis with orders to extract a cession of the remaining lands. The Treaty Commissioners spent two weeks using extraordinarily coercive tactics, including threats of war, in an attempt to get the Pottawatomis to agree to cede their territory. Finally, those Pottawatomis who were present relented and on September 26, 1833, they ceded their remaining tribal estate through what would be known as the Treaty of Chicago. Seventy-seven members of the Pottawatomis Nation signed the Treaty of Chicago. Members of the "Wisconsin Band" were not present and did not assent to the cession.

In exchange for their land, the Treaty of Chicago provided that the United States would give to the Pottawatomis five million acres of comparable land in what is now Missouri. The Pottawatomis were familiar with the Missouri land, aware that it was similar to their homeland. But the Senate refused to ratify that negotiated agreement and unilaterally switched the land to five million acres in Iowa. The Treaty Commissioners were sent back to acquire Pottawatomis assent to the Iowa land. All but seven of the original 77 signatories refused to accept the change even with promises that if they were dissatisfied "justice would be done. Nevertheless, the Treaty of Chicago was ratified as amended by the Senate in 1834. Subsequently, the Pottawatomis sent a delegation to evaluate the land in Iowa. The delegation reported back that the land was "not fit for snakes to live on."

While some Pottawatomis removed westward, many of the Pottawatomis particularly the Wisconsin Band, whose leaders never agreed to the Treaty, refused to do so. By 1836, the United States began to forcefully remove Pottawatomis who remained in the east with devastating consequences. As is true with many other American Indian tribes, the forced removal westward came at great human cost. Many of the Pottawatomis were forcefully removed by mercenaries who were paid on a per capita basis government contract. Over one-half of the Indians removed by these means died en route. Those who reached Iowa were almost immediately removed further to inhospitable parts of Kansas against their will and without their consent.

Knowing of these conditions, many of the Pottawatomis including most of those in the Wisconsin Band vigorously resisted forced removal. To avoid Federal troops and mercenaries, much of the Wisconsin Band ultimately found it necessary to flee to Canada. They were often pursued to the border by government troops, government-paid mercenaries or both. Official files of the Ca-

nadian and United States governments disclose that many Pottawatomis were forced to leave their homes without their horses or any of their possessions other than the clothes on their backs.

By the late 1830s, the government refused payment of annuities to any Pottawatomis groups that had not removed west. In the 1860s, members of the Wisconsin Band, those still in their traditional territory and those forced to flee to Canada, petitioned Congress for the payment of their treaty annuities promised under the Treaty of Chicago and all other cession treaties. By the Act of June 25, 1864 (13 Stat. 172) the Congress declared that the Wisconsin Band did not forfeit the annuities by not removing and directed that the share of the Pottawatomis Indians who had refused to relocate to the west should be retained for their use in the United States Treasury. (H.R. Rep. No. 470, 64th Cong., p. 5, as quoted on page 3 of memo dated October 7, 1949). Nevertheless, much of the money was never paid to the Wisconsin Band.

In 1903, the Wisconsin Band, most of whom now resided in three areas, the States of Michigan and Wisconsin and the Province of Ontario, petitioned the Senate once again to pay them their fair portion of annuities as required by the law and treaties. (Sen. Doc. No. 185, 57th Cong., 2d Sess.) By the Act of June 21, 1906 (34 Stat. 380), the Congress directed the Secretary of the Interior to investigate claims made by the Wisconsin Band and establish a role of the Wisconsin Band Pottawatomis that still remained in the East. In addition, the Congress ordered the Secretary to determine "the [Wisconsin Bands] proportionate shares of the annuities, trust funds, and other moneys paid to or expended for the tribe to which they belong in which the claimant Indians have not shared, [and] the amount of such monies retained in the Treasury of the United States to the credit of the claimant Indians as directed the provision of the Act of June 25, 1864."

In order to carry out the 1906 Act, the Secretary of Interior directed Dr. W.M. Wooster to conduct an enumeration of Wisconsin Band Pottawatomis in both the United States and Canada. Dr. Wooster documented 2007 Wisconsin Pottawatomis: 457 in Wisconsin and Michigan and 1550 in Canada. He also concluded that the proportionate share of annuities for the Pottawatomis in Wisconsin and Michigan was \$477,339 and that the proportionate share of annuities due the Pottawatomis Nation in Canada was \$1,517,226. The Congress thereafter enacted a series of appropriation Acts from June 30, 1913 to May 29, 1928 to satisfy most of money owed to those Wisconsin Band Pottawatomis residing in the United States. However, the Wisconsin Band Pottawatomis who resided in Canada were never paid their share of the tribal funds.

Since that time, the Pottawatomis Nation in Canada has diligently and continuously sought to enforce their treaty rights, although until this con-

gressional reference, they had never been provided their day in court. In 1910, the United States and Great Britain entered into an agreement for the purpose of dealing with claims between both countries, including claims of Indian tribes within their respective jurisdictions, by creating the Pecuniary Claims Tribunal. From 1910 to 1938, the Pottawatomis Nation in Canada diligently sought to have their claim heard in this international forum. Overlooked for more pressing international matters of the period, including the intervention of World War I, the Pottawatomis then came to the U.S. Congress for redress of their claim.

In 1946, the Congress waived its sovereign immunity and established the Indian Claims Commission for the purpose of granting tribes their long-delayed day in court. The Indian Claims Commission Act (ICCA) granted the Commission jurisdiction over claims such as the type involved here. In 1948, the Wisconsin Band Pottawatomis from both sides of the border, brought suit together in the Indian Claims Commission for recovery of damages. *Hannahville Indian Community v. U.S.*, No. 28 (Ind. Cl. Comm. Filed May 4, 1948). Unfortunately, the Indian Claims Commission dismissed Pottawatomis Nation in Canada's part of the claim ruling that the Commission had no jurisdiction to consider claims of Indians living outside territorial limits of the United States. *Hannahville Indian Community v. U.S.*, 115 Ct. Cl. 823 (1950). The claim of the Wisconsin Band residing in the United States that was filed in the Indian Claims Commission was finally decided in favor of the Wisconsin Band by the U.S. Claims Court in 1983. *Hannahville Indian Community v. United States*, 4 Ct. Cl. 445 (1983). The Court of Claims concluded that the Wisconsin Band was owed a member's proportionate share of unpaid annuities from 1838 through 1907 due under various treaties, including the Treaty of Chicago and entered judgment for the American Wisconsin Band Pottawatomis for any monies not paid. Still the Pottawatomis Nation in Canada was excluded because of the jurisdictional limits of the ICCA.

Undaunted, the Pottawatomis Nation in Canada came to the Senate and after careful consideration, we finally gave them their long-awaited day in court through the congressional reference process. The court has not reported back to us that their claim is meritorious and that the payment that this bill would make constitutes a "fair, just and equitable" resolution to this claim.

The Pottawatomis Nation in Canada has sought justice for over 150 years. They have done all that we asked in order to establish their claim. Now it is time for us to finally live up to the promise our government made so many years ago. It will not correct all the wrongs of the past, but it is a demonstration that this government is

willing to admit when it has left unfulfilled an obligation and that the United States is willing to do what we can to see that justice, so long delayed, is not now denied.

Finally, I would just note that the claim of the Pottawatomini Nation in Canada is supported through specific resolutions by the National Congress of American Indians, the oldest, largest and most-representative tribal organization here in the United States, the Assembly of First Nations, which includes all recognized tribal entities in Canada, and each and every of the Pottawatomini tribal groups that remain in the United States today.

By Mrs. LINCOLN (for herself and Mr. HUTCHINSON):

S. 2128. A bill to designate the United States courthouse located at 600 West Capitol Avenue in Little Rock, Arkansas, as the "Richard S. Arnold United States Courthouse"; to the Committee on Environmental and Public Works.

Mrs. LINCOLN. Madam President, I am pleased to introduce legislation today with my colleague from Arkansas, Senator HUTCHINSON, to name the Federal courthouse in Little Rock after the Honorable Richard S. Arnold, a beloved Federal judge from our home state. Our legislation has strong support from members of the Federal judiciary in Arkansas and I am honored to help lead this effort in the Senate. Like so many Arkansians who have the good fortune to know Judge Arnold personally, I believe it is appropriate to recognize such a respected scholar and member of the legal community in this manner.

Judge Richard Arnold has served his country and the judiciary with rare distinction first at the District Court level and more recently as Chief Judge for the Eighth Circuit Court of Appeals. Judge Arnold was appointed by President Carter in October 1978 to the District Bench for the Eastern and Western Districts of Arkansas and was elevated to the Court of Appeals in 1980. Judge Arnold took senior status in April, 2001 after he turned 65.

While serving as a member of the Federal judiciary, Judge Arnold has earned a national reputation as a brilliant, fair and effective judge. In 1999, Judge Arnold was the winner of the highly prestigious Edward J. Devitt Distinguished Service to Justice Award. This honor is presented annually to a Federal judge who has achieved an exemplary career and has made significant contributions to the administration of justice, the advancement of the rule of law, and the improvement of society as a whole.

Judge Arnold has also received the prestigious Meador-Rosenberg Award from the American Bar Association for his work and dialogue with members of Congress about the problems facing the Federal courts during his service as Chairman of the Budget Committee of the Judicial Conference of the United States. The award, which has only been

presented three times since its inception in 1994, was presented through the ABA's Standing Committee on Federal Judicial Improvements.

Judge Arnold received a Classical Diploma from Phillips Exeter Academy in 1953. He graduated from Yale with a B.A., summa cum laude, in 1957. Afterwards, Judge Arnold attended the Harvard Law School where he received the Sears Prize for achieving the best grades in the first-year class and the Fay Diploma for being first academically in his graduating class. Judge Arnold concluded his formal education upon receiving his LL.B. from Harvard magna cum laude in 1960.

After law school, Judge Arnold served as a law clerk to Justice William J. Brennan, Jr. Arnold then practiced law in Washington, D.C., and Texarkana, Arkansas. Prior to his appointment to the bench, Judge Arnold worked for the Honorable Dale Bumpers while Bumpers was Governor of Arkansas and a United States Senator.

I ask unanimous consent that the text of this legislation be printed in the RECORD.

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

S. 2128

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

SECTION 1. DESIGNATION OF RICHARD S. ARNOLD UNITED STATES COURTHOUSE.

The United States courthouse located at 600 West Capitol Avenue in Little Rock, Arkansas, and any addition to the courthouse that may hereafter be constructed, shall be known and designated as the "Richard S. Arnold United States Courthouse".

SEC. 2. REFERENCES.

Any reference in a law, map, regulation, document, paper, or other record of the United States to the United States courthouse referred to in section 1 shall be deemed to be a reference to the Richard S. Arnold United States Courthouse.

Mr. HUTCHINSON. Madam President, throughout a long career on the Federal bench, Judge Richard Sheppard Arnold has exhibited tremendous integrity and commitment to public service. I am honored to join my colleague from Arkansas in introducing legislation to designate the Federal Courthouse in Little Rock, Arkansas, as the Judge Richard S. Arnold United States Courthouse.

Finishing toward the top of his class both at Yale College and at Harvard Law School, Judge Arnold began his legal career as a Law Clerk to Justice William J. Brennan, Jr., of the Supreme Court of the United States. In October of 1978, President Carter appointed him to the District Bench for the Eastern and Western Districts of Arkansas, and he was soon elevated to the United States Court of Appeals for the Eighth Circuit in 1980. There he served as Chief Judge from 1992 through 1998. Since April of 2001, Judge Arnold has served as Senior U.S. Circuit Judge for the Eighth Circuit.

For the duration of his service on the bench, Judge Arnold has maintained a reputation as a true gentleman who possesses a keen intellect. Perhaps the finest measure of a man, however, is found in his friends. Judge Arnold has many. It was the entire bench of the Eastern District of Arkansas that came up with the proposal to name the courthouse in his honor, and nearly every day my mail includes a letter from a Judge in Arkansas championing this designation. Such unqualified support at the end of a long career is truly remarkable.

Judge Arnold has certainly earned the honor this legislation would bestow. I hope my colleagues will join us in supporting the designation of the Little Rock, Arkansas, Federal Court House as the Judge Richard S. Arnold United States Courthouse.

By Mr. BINGAMAN:

S. 2129. A bill to amend the Internal Revenue Code of 1986 to clarify that any home-based service worker is an employee of the administrator of home-based service worker program funding; to the Committee on Finance.

By Mr. BINGAMAN:

S. 2130. A bill to amend the Internal Revenue Code of 1986 to allow self-employed individuals to deduct health insurance costs in computing self-employment taxes; to the Committee on Finance.

By Mr. BINGAMAN:

S. 2131. A bill to amend the Internal Revenue Code of 1986 to adjust the dollar amounts used to calculate the credit for the elderly and the permanently disabled for inflation since 1985; to the Committee on Finance.

Mr. BINGAMAN. Madam President, I rise today to introduce three pieces of legislation that combined are an important step in creating a fairer and simpler Internal Revenue Code. These bills simplify the tax filing process and/or reduce the tax burden for the self employed, home-based service workers, the elderly and the disabled. These proposals are consistent with recommendations contained in the 2001 Taxpayer Advocate's Report and need our attention in Congress this year.

The first piece of legislation will address a problem that negatively impacts many recipients and providers of state supported home-based service programs. Under current law, depending on the manner in which States manage their home-based service programs, these workers are sometimes treated for Federal income tax purposes as independent contractors instead of employees. This improper classification results in these workers being responsible for paying all of the payroll taxes owed on payments received for their services instead of paying only half as would be required if they were properly treated as employees. In other States, the home-based

service worker is treated as an employee, but the recipients of the service, generally the disabled and/or elderly, are treated as the employer thereby making them responsible for remitting payroll taxes for the worker. My first proposal would correct these inconsistent treatments and, for tax purposes, deem all home-based service workers to be employees. At the same time, it would deem the State or State-funded organization to be the employer. These changes will significantly reduce inadvertent tax filing errors and make certain that the elderly and disabled are not responsible for payroll taxes for their State supported home-based care. It will also guarantee that home-based care service workers will only pay their share of payroll taxes and not be burdened with paying the employer's share as well.

The second piece of legislation that I am introducing would allow self-employed workers to treat their expenses related to the purchase of health insurance in the same fashion as those workers who receive their health insurance on a pre-tax basis through their employer. Under current law, self-employed workers are required to remit payroll taxes on the amounts they pay for their health insurance coverage. This legislation would remove this inequity and allow the self-employed to reduce their net earnings by the cost of their health insurance for purposes of determining their payroll tax liability for the year. This proposal is another step in an effort to make sure that health insurance is an affordable option for all self-employed workers and their families.

The final piece of legislation that I am introducing would increase the number of taxpayers who would be eligible for the existing tax credit for the elderly and disabled as well as raise the amount that some would receive. This tax credit was created to guarantee that the elderly and disabled are able to support themselves when their Social Security or other non-taxable pensions are insufficient to cover their modest expenses. Since 1983, however, the amounts used to calculate the availability and amount of this credit have not been increased. By not indexing this provision for inflation, the number of taxpayers claiming this credit has dropped substantially. In 1998, the most recent year available from the IRS, 180,473 taxpayers claimed the credit as compared to 339,818 in 1990. This proposal would raise the limits of this credit to the level it would currently be at if the provision had been indexed for inflation starting in 1983 as well index it going forward.

I look forward to working with my colleagues on both sides of the aisle in advancing these pieces of legislation.

I ask unanimous consent that the text of the three bills be printed in the RECORD.

There being no objection, the bills were ordered to be printed in the RECORD, as follows:

S. 2129

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

SECTION 1. CLARIFICATION OF EMPLOYEE STATUS OF HOME-BASED SERVICE WORKERS.

(a) IN GENERAL.—Section 3121(d)(3) of the Internal Revenue Code of 1986 (defining employee) is amended by striking “and” at the end of subparagraph (C), by adding “or” at the end of subparagraph (D), and by inserting after subparagraph (D) the following new subparagraph:

“(E) any qualified home-based service worker;”.

(b) DEFINITION.—Section 3121(d) of the Internal Revenue Code of 1986 is amended by adding at the end the following new flush sentence:

“For purposes of paragraph (3)(E), the term ‘qualified home-based service worker’ means an individual providing in-home household or personal care services for disabled and elderly individuals under a program the funding of which is administered by a State, State agency, or an intermediate services organization.”.

(c) PROGRAM AGENT TREATED AS EMPLOYER OF QUALIFIED HOME-BASED SERVICE WORKER.—Section 3504 of the Internal Revenue Code of 1986 (relating to acts to be performed by agents) is amended—

(1) by striking “In case a fiduciary” and inserting:

“(a) IN GENERAL.—In case of a fiduciary”, and

(2) by adding at the end the following new subsection:

“(b) HOME-BASED SERVICE WORKER PROGRAMS.—For purposes of subsection (a), in the case of any program under which is provided funding for the employment of qualified home-based service workers (as defined in section 3121(d)), the administrator of such funding shall be treated as the agent for any employer of such worker and such employer shall not remain subject to the provisions of law (including penalties) applicable in respect of such an employer.”.

(d) EFFECTIVE DATE.—The amendments made by this section shall apply to services performed after December 31, 2002.

S. 2130

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

SECTION 1. DEDUCTION FOR HEALTH INSURANCE COSTS IN COMPUTING SELF-EMPLOYMENT TAXES.

(a) IN GENERAL.—Section 161(l) of the Internal Revenue Code of 1986 (relating to special rules for health insurance costs of self-employed individuals) is amended by striking paragraph (4) and by redesignating paragraph (5) as paragraph (4).

(b) EFFECTIVE DATE.—The amendments made by this section shall apply to taxable years beginning after the date of the enactment of this Act.

S. 2131

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

SECTION 1. INFLATION ADJUSTMENT FOR ELDERLY AND DISABLED CREDIT DOLLAR AMOUNTS.

(a) IN GENERAL.—Section 22 of the Internal Revenue Code of 1986 (relating to credit for the elderly and the permanently disabled) is amended by adding at the end the following new subsection:

“(g) INFLATION ADJUSTMENT.—

“(1) IN GENERAL.—In the case of any taxable year beginning after 2002, each of the

dollar amounts contained in subsections (c) and (d) shall be increased by an amount equal to—

“(i) such dollar amount, multiplied by

“(ii) the cost-of-living adjustment determined under section 1(f)(3) for such calendar year, by substituting ‘1983’ for ‘1992’ in subparagraph (B) thereof.

“(B) ROUNDING.—If any increase determined under subparagraph (A) is not a multiple of \$50, such increase shall be rounded to the nearest multiple of \$50.”.

(b) EFFECTIVE DATE.—The amendment made by this section shall apply to taxable years beginning after December 31, 2002.

By Mrs. FEINSTEIN (for herself, Mr. KYL, Mr. BAYH, Mr. LOTT, Mr. BREAUX, Mr. ALLARD, Mr. CLELAND, Mr. BUNNING, Ms. LANDRIEU, Mr. CRAIG, Mrs. LINCOLN, Mr. DEWINE, Mr. WYDEN, Mr. FRIST, Mr. HAGEL, Mr. HELMS, Mr. HUTCHINSON, Mrs. HUTCHISON, Mr. INHOFE, Mr. MCCAIN, Mr. SHELBY, Mr. SMITH of Oregon, and Mr. WARNER):

S.J. Res. 35. A joint resolution proposing an amendment to the Constitution of the United States to protect the rights of crime victims; to the Committee on the Judiciary.

Mrs. FEINSTEIN. Madam President, National Crime Victims' Rights Week begins on Sunday.

Next week, communities across the country will be holding observances, candlelight vigils, rallies, and other events to honor and support crime victims and their rights.

Also, in just a few days—specifically, April 19—we will mark the 7th anniversary of the bombing of the Alfred P. Murrah Federal Building in Oklahoma City.

That attack resulted in the deaths of 168 people.

And it was just over seven months ago that, over a period of two hours and three minutes, we suffered the deadliest act of domestic terrorism in our history.

Over 3,000 people died in the attacks on that day—more than died at Pearl Harbor.

Thus, it seems appropriate for all of us in this esteemed body to stop a minute and think about victims' rights.

Last year, the Senate debated a proposed constitutional amendment drafted by Senator KYL and me to protect the rights of victims of violent crime.

The amendment had been reported out of the Senate Judiciary Committee on a strong bipartisan vote of 12 to 5.

After 82 Senators voted to proceed to consideration of the amendment, there was a vigorous debate on the floor of the Senate.

Some Senators raised concerns about the amendment, saying that it was too long or that it read too much like a statute.

Ultimately, in the face of a threatened filibuster, Senator KYL and I decided to withdraw the amendment.

We then hunkered down with constitutional experts such as Professor Larry Tribe of Harvard Law School to

see if we could revise the amendment to meet Senators' concerns. We also worked with constitutional experts at the Department of Justice and the White House.

And we have come up with a new and improved draft of the amendment.

This new amendment provides many of the same rights as the old amendment.

Specifically, the amendment would give crime victims the rights to be notified, present, and heard at critical stages throughout their case.

It would ensure that their views are considered and they are treated fairly.

It would ensure that their interest in a speedy resolution of the case, safety, and claims for restitution are not ignored.

And it would do so in a way that would not abridge the rights of defendants or offenders, or otherwise disrupt the delicate balance of our Constitution.

There are many reasons why we need a constitutional amendment.

First, a constitutional amendment will balance the scales of justice.

Currently, while criminal defendants have almost two dozen separate constitutional rights—fifteen of them provided by amendments to the U.S. Constitution—there is not a single word in the Constitution about crime victims.

These rights trump the statutory and state constitutional rights of crime victims because the U.S. Constitution is the supreme law of the land.

To level the playing field, crime victims need rights in the U.S. Constitution.

In the event of a conflict between a victim's and a defendant's rights, the court will be able to balance those rights and determine which party has the most compelling argument.

Second, a constitutional amendment will fix the patchwork of victims' rights laws.

Eighteen states lack state constitutional victims' rights amendments. And the 32 existing state victims' rights amendments differ from each other.

Also, virtually every state has statutory protections for victims, but these vary considerably across the country.

Only a federal constitutional amendment can ensure a uniform national floor for victims' rights.

Third, a constitutional amendment will restore rights that existed when the Constitution was written.

It is a little known fact that at the time the Constitution was drafted, it was standard practice for victims—not public prosecutors—to prosecute criminal cases.

Because victims were parties to most criminal cases, they enjoyed the basic rights to notice, to be present, and be heard.

Hence, it is not surprising that the Constitution does not mention victims.

Now, of course, it is extremely rare for a victim to undertake a criminal prosecution.

Thus, victims have none of the basic procedural rights they used to enjoy.

Victims should receive some of the modest notice and participation rights they enjoyed at the time that the Constitution was drafted.

Fourth, a constitutional amendment is necessary because mere state law is insufficient.

State victims' rights laws lacking the force of federal constitutional law are often given short shrift.

A Justice Department-sponsored study and other studies have found that, even in states with strong legal protections for victims; rights, many victims are denied those rights. The studies have also found that statutes are insufficient to guarantee victims' rights.

Only a federal constitutional amendment can ensure that crime victims receive the rights they are due.

Fifth, a constitutional amendment is necessary because federal statutory law is insufficient.

The leading statutory alternative to the Victims' Rights Amendment would only directly cover certain violent crimes prosecuted in Federal court. Thus, it would slight more than 99 percent of victims of violent crime.

We should acknowledge that Federal statutes have been tried and found wanting. It is time for us to amend the U.S. Constitution.

The Oklahoma City bombing case offers another reason why we need a constitutional amendment.

This case shows how even the strongest Federal statute is too weak to protect victims in the face of a defendant's constitutional rights.

In that case, two Federal victims' statutes were not enough to give victims of the bombing a clear right to watch the trial and still testify at the sentencing—even though one of the statutes was passed with the specific purpose of allowing the victims to do just that.

Let me quote from the first of these statutes: the Victims of Crime Bill of Rights, passed in 1990. That Bill of Rights provides in part that:

A crime victim has the following rights: The right to be present at all public court proceedings related to the offense, unless the court determines that testimony by the victim would be materially affected if the victim heard other testimony at trial.

That statute further states that Federal Government officers and employees "engaged in the detection, investigation, or prosecution of crime shall make their best efforts to see that victims of crime are accorded the[se] rights."

The law also provides that "[t]his section does not create a cause of action or defense in favor of any person arising out of the failure to accord to a victim the[se] rights."

In spite of the law, the judge in the Oklahoma City bombing case ruled—without any request from Timothy McVeigh's attorneys—that no victim

who saw any portion of the case could testify about the bombing's impact at a possible sentencing hearing:

The Justice Department asked the judge to exempt victims who would not be "factual witnesses at trial" but who might testify at a sentencing hearing about the impact of the bombing on their lives.

The judge denied the motion.

The victims were then given until the lunchbreak to decide whether to watch the proceedings or remain eligible to testify at a sentencing hearing.

In the hour that they had, some of the victims opted to watch the proceedings; others decided to leave to remain eligible to testify at the sentencing hearing.

Subsequently, the Justice Department asked the court to reconsider its order in light of the 1990 Victims' Bill of Rights. Bombing victims then filed their own motion to raise their rights under the Victims' Bill of Rights.

The court denied both motions. With regard to the victims' motion, the judge held that the victims lacked standing.

The judge stated that the victims would not be able to separate the "experience of trial" from the "experience of loss from the conduct in question." The judge also alluded to concerns about the defendants' constitutional rights, the common law, and rules of evidence.

The victims and DOJ separately appealed to the Court of Appeals for the Tenth Circuit.

That court ruled that the victims lacked standing under Article III of the Constitution because they had no "legally protected interest" to be present at trial and thus had suffered no "injury in fact" from their exclusion.

The victims and DOJ then asked the entire Tenth Circuit to review that decision.

Forty-nine members of Congress, all six attorneys general in the Tenth Circuit, and many of the leading crime victims' organizations filed briefs in support of the victims. All to no avail. The Victims' Clarification Act of 1997 was then introduced in Congress.

That act provided that watching a trial does not constitute grounds for denying victims the chance to provide an impact statement. This bill passed the House 414 to 13 and the Senate by unanimous consent.

Two days later, President Clinton signed it into law, explaining that "when someone is a victim, he or she should be at the center of the criminal justice process, not on the outside looking in."

The victims then filed a motion asserting a right to attend the trial under the new law.

However, the judge declined to apply the law as written.

He concluded that "any motions raising constitutional questions about this legislation would be premature and would present questions issues that are not now ripe for decision."

Moreover, he held that it could address issues of possible prejudicial impact from attending the trial by interviewing the witnesses after the trial.

The judge also refused to grant the victims a hearing on the application of the new law, concluding that his ruling rendered their request "moot."

The victims then faced a painful decision: watch the trial or preserve their right to testify at the sentencing hearing.

Many victims gave up their right to watch the trial as a result.

A constitutional amendment would help ensure that victims of a domestic terrorist attack such as the Oklahoma City bombing have standing and that their arguments for a right to be present are not dismissed as "unripe."

A constitutional amendment would give victims of violent crime an unambiguous right to watch a trial and still testify at sentencing.

There is strong and wide support for a constitutional amendment.

I am pleased that President Bush and Attorney General Ashcroft have endorsed the amendment. I greatly appreciate their support.

And I am also pleased that both former President Clinton and former Vice President Gore have all expressed support for a constitutional amendment on victims' rights.

Moreover, in the last Congress, the Victims' Rights Amendment was cosponsored by a bipartisan group of 41 Senators.

I have spoken to many of my colleagues about the amendment we introduce today and I am hopeful that it will receive even more support in this Congress. In addition:

Both the Democratic and Republican Party platforms call for a victims' rights amendment.

Governors in 49 out of 50 states have called for an amendment.

Four former U.S. Attorneys General, including Attorney General Reno, support an amendment. Attorney General Ashcroft supports an amendment.

Forty state attorneys general support an amendment.

Major national victims' rights groups—including Parents of Murdered Children, Mothers Against Drunk Driving, MADD, and the National Organization for Victim Assistance—support the amendment.

Many law enforcement groups, including the Nation Troopers' Coalition, the International Union of Police Associations AFL-CIO, and the Federal Law Enforcement Officers Association, support an amendment.

Constitutional scholars such as Harvard Law School Professor Larry Tribe support an amendment.

The amendment has received strong support around the country. Thirty-two states have passed similar measures—by an average popular vote of almost 80 percent.

I am delighted to join my good friend Senator JON KYL in sponsoring the Victims' Rights Amendment, and I look

forward to its adoption by this Congress.

I think it is probably well known in this body that Senator KYL and I have authored what is called the victim's rights constitutional amendment. One of the most perplexing things about the history of this amendment has been that everybody outside of this Chamber supports it. Governors support it. Attorneys general support it. Democratic candidates support it. Republican candidates support it. But when it came down to the fine discussion on this floor, we were told, well, it is too pedantic. Well, there are too many words—well, well.

Senator KYL and I have hunkered down. We have gone back to our constitutional experts on this side of the aisle: Professor Larry Tribe, who has been a very active participant in drafting this, and Steve Twist representing the victims, and many victims' organizations, as well as Paul Cassell, show has worked with us on this amendment.

We have essentially redone the victims' rights constitutional amendment, really based on comments made on the floor. It is now succinct. It has a much more poetic flow to it. We believe it is an improved amendment. We are introducing it at this time because next week communities around the country will be holding observances, candlelight vigils, rallies, and other events to honor and support crime victims and their rights.

In just a few days—specifically April 19—we will mark the seventh anniversary of the bombing of the Alfred P. Murrah Federal Building in Oklahoma City. That attack resulted in the deaths of some 168 people.

I would like to very quickly read from a study that was conducted by the Department of Justice, the Office of Justice Programs, on this particular subject because I think their findings are significant.

Let me read one of them. I quote:

Nevertheless, serious deficiencies remain in the nation's victims' rights laws as well as their implementation.

The Presiding Officer will remember when we passed two statutes to clarify victims' rights as a product of the Oklahoma City bombing. The judge ignored them. Then we passed another one. It went to the appellate court, and the appellate court found that the victims were without standing in the Constitution. Of course, that is what we are trying to remedy here. Thirty-two States have passed victims' rights State amendments. They are all different. Sometimes they are observed and sometimes they are not.

Their report goes on to say:

The rights of crime victims vary significantly among States and at the Federal level. Frequently, victims' rights are ignored. Even in States that have enacted constitutional rights for victims, implementation is often arbitrary and based on the individual practices and preferences of criminal justice officials. Moreover, many States do not provide comprehensive rights for victims of juvenile offenders.

Let me go on to the recommendation of the Department of Justice. I quote:

A Federal constitutional amendment for victims' rights is needed for many different reasons, including: One, to establish a consistent floor of rights for crime victims in every State and at the Federal level; two, to ensure the courts engage in a careful and conscientious balancing of the rights of victims and defendants; three, to guarantee crime victims the opportunity to participate in proceedings related to crimes against them; and, four, to enhance the participation of victims in the criminal justice process.

A victims' rights constitutional amendment is the only legal measure strong enough to rectify the current inconsistencies in victims' rights laws that vary significantly from jurisdiction to jurisdiction on the State and Federal level.

I know Senator KYL would like to address himself to this measure. His leadership has been unparalleled. It has been a great delight for me to work with him.

The PRESIDING OFFICER. The Senator from Arizona.

Mr. KYL. Madam President, I thank Senator FEINSTEIN for her work on this amendment for several years now. She was tremendously helpful in working with the past administration. She and I have both worked with various victims groups. I think they rightly regard her as a champion of victims' rights in this country.

She mentioned that next week is National Crime Victims' Rights Week. It begins Sunday. It is fitting that we could introduce this legislation today because tomorrow, at a ceremony at the Department of Justice, it is my understanding there will be a very important announcement by the President and the Attorney General with respect to this amendment.

Just to be very brief about our support for this amendment at this time, I will simply address the differences between this year's amendment and last year's amendment.

Even though last year's amendment to the Constitution had 40 cosponsors and was bipartisan, and was considered—incidentally, I appreciate the efforts of the distinguished Presiding Officer as chairman of the committee, the Judiciary Committee. We had a strong bipartisan vote of 12 to 5 for this amendment out of the Judiciary Committee last year. I appreciate the Presiding Officer's assistance in that, notwithstanding some differences of opinion with respect to the specifics of the amendment.

We withdrew the bill from consideration on the floor when we knew it would be the subject of prolonged discussion—we shall put it that way—and agreed to consider the criticism of some of the opponents at that time that the phrasing of the language was not elegant enough and perhaps too wordy.

Now, the constitutional amendment contains 12 key lines of text with respect to the rights of victims. There are another 10 lines of text that provide for exceptions or caveats to that grant of constitutional protection. I

think the language much more closely approximates the other amendments to the U.S. Constitution.

I thank Professor Laurence Tribe for his consideration, expertise, and assistance in developing the language toward that end. I am hopeful my colleagues will give a close look at this new protection. The rights protected are essentially the same, but I think the way in which it is done is more in line with other constitutional amendments. I am hopeful we will have an opportunity to make a substantive case for this amendment and to discuss in detail, with our colleagues, the reasons for our desire that we get a vote on it this year.

I will just conclude by noting—especially because starting Sunday we will be celebrating National Crime Victims' Rights Week—the number of groups that are represented here in Washington to participate in various presentations and celebrations of National Crime Victims' Rights Week and who will also be participating in the meeting tomorrow at the Department of Justice.

Supporters include the National Governors Association, which has voted in favor of an amendment. Both the Republican and Democratic Party platforms of the last Presidential election and their nominees supported such an amendment. It is supported by major national victims' rights groups, including Parents of Murdered Children, Mothers Against Drunk Driving, and the National Organization for Victim Assistance, in addition to the Stephanie Roper Foundation, the Arizona Voice for the Crime Victims, Crime Victims United, and Memory of Victims Everywhere.

And especially, in addition to Senator FEINSTEIN and the Attorney General of the United States, who has been very helpful in helping us formulate the specific wording of the amendment, I thank the National Organization for Victims Assistance, the National Constitutional Amendment Network, Mothers Against Drunk Driving, Parents of Murdered Children, Roberta Roper, and the Stephanie Roper Foundation, and Steve Twist, who has been enormously supportive in working the language and coordinating the efforts with these various victims' rights groups. Steve is a lawyer in Phoenix, AZ, and has been indispensable in my efforts.

Finally, Mr. President, Senator FEINSTEIN has asked that I have printed in the RECORD a letter dated April 15, 2002, from Laurence H. Tribe to Senator FEINSTEIN and myself. I will just read two excerpts from it, conclude my remarks, and submit it for the RECORD.

Professor Tribe says:

Dear Senators Feinstein and Kyl:

I think that you have done a splendid job at distilling the prior versions of the Victims' Rights Amendment into a form that would be worthy of a constitutional amendment—an amendment to our most fundamental legal charter, which I agree ought never be altered lightly. . . .

How best to protect that right without compromising either the fundamental rights of the accused or the important prerogatives of the prosecution is not always a simple matter, but I think your final working draft of April 13, 2002, resolves that problem in a thoughtful and sensitive way, improving in a number of respects on the earlier drafts that I have seen. Among other things, the greater brevity and clarity of this version makes it more fitting for inclusion in our basic law. That you achieved such conciseness while fully protecting defendants' rights and accommodating the legitimate concerns that have been voiced about prosecutorial power and presidential authority is no mean feat. I happily congratulate you both on attaining it.

I would say, editorially, not without substantial help from Professor Tribe himself.

Madam President, I ask unanimous consent that this letter be printed in the RECORD.

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

HARVARD UNIVERSITY
LAW SCHOOL,
Cambridge, MA, April 15, 2002.

Hon. DIANNE FEINSTEIN,
U.S. Senate, Hart Senate Office Building,
Washington, DC.

Hon. JON KYL, U.S. Senate, Hart Senate Office Building, Washington, DC.

DEAR SENATORS FEINSTEIN AND KYL: I think that you have done a splendid job at distilling the prior versions of the Victims' Rights Amendment into a form that would be worthy of a constitutional amendment—an amendment to our most fundamental legal charter, which I agree ought never to be altered lightly. I will not repeat here the many reasons I have set forth in the past for believing that, despite the skepticism I have detected in some quarters both on the left and on the right, the time is past due for recognizing that the victims of violent crime, as well as those closest to victims who have succumbed to such violence, have a fundamental right to be considered, and heard when appropriate, in decisions and proceedings that profoundly affect their lives.

How best to protect that right without compromising either the fundamental rights of the accused or the important prerogatives of the prosecution is not always a simple matter, but I think your final working draft of April 13, 2002, resolves that problem in a thoughtful and sensitive way, improving in a number of respects on the earlier drafts that I have seen. Among other things, the greater brevity and clarity of this version makes it more fitting for inclusion in our basic law. That you achieved such conciseness while fully protecting defendants' rights and accommodating the legitimate concerns that have been voiced about prosecutorial power and presidential authority is no mean feat. I happily congratulate you both on attaining it.

A case argued two weeks ago in the Supreme Judicial Court of Massachusetts, in which a woman was brutally raped a decade and a half ago but in which the man who was convicted and sentenced to a long prison term has yet to serve a single day of that sentence, helps make the point that the legal system does not do well by victims even in the many states that, on paper, are committed to the protection of victims' rights. Despite the Massachusetts Victims' Bill of Rights, solemnly enacted by the legislature to include an explicit right on the part of the victim to a "prompt disposition" of the case in which he or she was victimized, the Mas-

sachusetts Attorney General, to who has yet to take the simple step of seeking the incarceration of the convicted criminal pending his on-again, off-again motion for a new trial—a motion that has not been ruled on during the 15 years that this convicted rapist has been on the streets—has taken the position that the victim of the rape does not even have legal standing to appear in the courts of this state, through counsel, to challenge the state's astonishing failure to put her rapist in prison to begin serving the term to which he was sentenced so long ago.

If this remarkable failure of justice represented a wild aberration, perpetrated by a state that has not incorporated the rights to victims into its laws, then it would prove little, standing alone, about the need to write into the United States Constitution a national commitment to the rights of victims. Sadly, however, the failure of justice of which I write here is far from aberrant. It represents but the visible tip of an enormous iceberg of indifference toward those whose rights ought finally to be given formal federal recognition.

I am grateful to you for fighting this fight. I only hope that many others can soon be stirred to join you in a cause that deserves the most widespread bipartisan support.

Sincerely yours,

LAURENCE H. TRIBE.

SUBMITTED RESOLUTIONS

SENATE RESOLUTION 240—TO AUTHORIZE REPRESENTATION BY THE SENATE LEGAL COUNSEL IN AARON RAISER V. HONORABLE TOM DASCHLE, ET AL

Mr. REID (for himself, and Mr. NICKLES) submitted the following resolution; which was considered and agreed to:

S. RES. 240

Whereas, the Senate, Senator Tom Daschle, and Senator Trent Lott have been named as defendants in the case of Aaron Raiser v. Honorable Tom Daschle, et al., Case No. 01CV894B, now pending in the United States District Court for the District of Utah;

Whereas, pursuant to sections 703(a) and 704(a)(1) of the Ethics in Government Act of 1978, 2 U.S.C. §§288b(a) and 288c(a)(1), the Senate may direct its counsel to represent the Senate and its Members in civil actions with respect to proceedings or actions taken in their official capacities; Now, therefore, be it

Resolved, That the Senate Legal Counsel is authorized to represent the Senate, Senator Tom Daschle, and Senator Trent Lott in the case of Aaron Raiser v. Honorable Tom Daschle, et al.

SENATE RESOLUTION 241—DESIGNATING APRIL 11, 2002, AS "NATIONAL ALTERNATIVE FUEL VEHICLE DAY"

Mr. ROCKEFELLER (for himself, Mr. BYRD, Mr. HATCH, Mr. REID, Mr. DASCHLE, and Mr. DURBIN) submitted the following resolution; which was considered and agreed to.

S. RES. 241

Whereas the energy security of the United States needs to be strengthened to prevent future terrorist attacks;

Whereas the United States needs to reduce its dependence on foreign oil;