

from Wisconsin (Mr. KOHL) were added as cosponsors of S. 1785, a bill to urge the President to establish the White House Commission on National Military Appreciation Month, and for other purposes.

S. 1924

At the request of Mr. SANTORUM, the name of the Senator from Utah (Mr. BENNETT) was added as a cosponsor of S. 1924, a bill to promote charitable giving, and for other purposes.

S. 2079

At the request of Mr. ROCKEFELLER, the name of the Senator from California (Mrs. BOXER) was added as a cosponsor of S. 2079, a bill to amend title 38, United States Code, to facilitate and enhance judicial review of certain matters regarding veteran's benefits, and for other purposes.

S. 2246

At the request of Mr. DODD, the name of the Senator from Vermont (Mr. LEAHY) was added as a cosponsor of S. 2246, a bill to improve access to printed instructional materials used by blind or other persons with print disabilities in elementary and secondary schools, and for other purposes.

S. 2512

At the request of Mr. HARKIN, the name of the Senator from Maine (Ms. SNOWE) was added as a cosponsor of S. 2512, a bill to provide grants for training court reporters and closed captioners to meet requirements for realtime writers under the Telecommunications Act of 1996, and for other purposes.

S. 2513

At the request of Mr. BIDEN, the name of the Senator from South Dakota (Mr. JOHNSON) was added as a cosponsor of S. 2513, a bill to assess the extent of the backlog in DNA analysis of rape kit samples, and to improve investigation and prosecution of sexual assault cases with DNA evidence.

S. 2606

At the request of Mrs. BOXER, the name of the Senator from Massachusetts (Mr. KERRY) was added as a cosponsor of S. 2606, a bill to require the Secretary of Labor to establish a trade adjustment assistance program for certain service workers, and for other purposes.

S. 2613

At the request of Mr. LIEBERMAN, the name of the Senator from Alabama (Mr. SESSIONS) was added as a cosponsor of S. 2613, a bill to amend section 507 of the Omnibus Parks and Public Lands Management Act of 1996 to authorize additional appropriations for historically black colleges and universities, to decrease the cost-sharing requirement relating to the additional appropriations, and for other purposes.

S. 2712

At the request of Mr. HAGEL, the names of the Senator from South Dakota (Mr. DASCHLE), the Senator from Delaware (Mr. BIDEN), and the Senator from Florida (Mr. NELSON) were added

as cosponsors of S. 2712, a bill to authorize economic and democratic development assistance for Afghanistan and to authorize military assistance for Afghanistan and certain other foreign countries.

S. 2734

At the request of Mr. KERRY, the names of the Senator from Idaho (Mr. CRAPO) and the Senator from South Carolina (Mr. THURMOND) were added as cosponsors of S. 2734, a bill to provide emergency assistance to non-farm small business concerns that have suffered economic harm from the devastating effects of drought.

S. 2742

At the request of Mrs. CLINTON, her name was added as a cosponsor of S. 2742, a bill to establish new non-immigrant classes for border commuter students.

S. 2760

At the request of Mr. ALLARD, his name was added as a cosponsor of S. 2760, a bill to direct the Securities and Exchange Commission to conduct a study and make recommendations regarding the accounting treatment of stock options for purposes of the Federal securities laws.

S. 2800

At the request of Mr. BAUCUS, the names of the Senator from North Carolina (Mr. HELMS), the Senator from Missouri (Mrs. CARNAHAN) and the Senator from Arkansas (Mrs. LINCOLN) were added as cosponsors of S. 2800, a bill to provide emergency disaster assistance to agricultural producers.

S. 2816

At the request of Mr. BAUCUS, the name of the Senator from Georgia (Mr. CLELAND) was added as a cosponsor of S. 2816, a bill to amend the Internal Revenue Code of 1986 to improve tax equity for military personnel, and for other purposes.

S.J. RES. 37

At the request of Mr. WELLSTONE, the name of the Senator from Louisiana (Ms. LANDRIEU) was added as a cosponsor of S.J. Res. 37, a joint resolution providing for congressional disapproval under chapter 8 of title 5, United States Code, of the rule submitted by Centers for Medicare & Medicaid Services within the Department of Health and Human Services relating to modification of the medicaid upper payment limit for non-State government owned or operated hospitals published in the Federal Register on January 18, 2002, and submitted to the Senate on March 15, 2002.

S.J. RES. 40

At the request of Mrs. LINCOLN, the names of the Senator from Utah (Mr. HATCH) and the Senator from Maryland (Mr. SARBANES) were added as cosponsors of S.J. Res. 40, a joint resolution designating August as "National Missing Adult Awareness Month".

S. CON. RES. 124

At the request of Mr. CAMPBELL, the name of the Senator from Illinois (Mr.

DURBIN) was added as a cosponsor of S. Con. Res. 124, a concurrent resolution condemning the use of torture and other forms of cruel, inhumane, or degrading treatment or punishment in the United States and other countries, and expressing support for victims of those practices.

## STATEMENTS ON INTRODUCED BILLS AND JOINT RESOLUTIONS

By Mr. NICKLES (for himself and Mr. INHOFE):

S. 2828. A bill to redesignate the facility of the United States Postal Service located at 6910 South Yorktown Avenue in Tulsa, Oklahoma, as the "Robert Wayne Jenkins Station"; to the Committee on Governmental Affairs.

Mr. NICKLES. Mr. President, I rise today to honor the memory of Robert Wayne Jenkins, a U.S. Postal Service letter carrier who was tragically killed while serving the Tulsa community and to introduce legislation that would redesignate the Southside Station Postal Service facility in Tulsa, Oklahoma, as the "Robert Wayne Jenkins Station".

On December 21, 2001, Robert Wayne Jenkins said goodbye to his wife Amber and daughter Caitlyn and left home for work. Arriving with his usual friendly and positive attitude, Robert prepared for his mail route. Before leaving the office to deliver the mail on his route, Robert gave his customary message to a fellow letter carrier: "be safe". That afternoon, Robert was senselessly gunned down while on his route, dying instantly.

Robert Wayne Jenkins was in his ninth year of dedicated service in a job he truly loved. His co-workers respected his dedication and professionalism, and Robert was also greatly admired for his love and devotion to his wife and daughter. The spirit and vitality with which Robert served the U.S. Postal Service and his community will live on in the hearts of those who were privileged to know him.

Rededicating the southside station in Tulsa as the Robert Wayne Jenkins Station is an honor most appropriate for an American who asked for so little but who gave so much to his family, his friends, the United States Postal Service, and the Tulsa community.

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

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

S. 2828

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

### SECTION 1. DESIGNATION OF ROBERT WAYNE JENKINS STATION.

(a) DESIGNATION.—The facility of the United States Postal Service located at 6910 South Yorktown Avenue in Tulsa, Oklahoma, and known as the "Southside Station", shall be known and designated as the "Robert Wayne Jenkins Station".

(b) REFERENCES.—Any reference in a law, map, regulation, document, paper, or other

record of the United States to the facility referred to in subsection (a) shall be deemed to be a reference to the Robert Wayne Jenkins Station.

By Mr. AKAKA:

S. 2829. A bill to authorize appropriations for the Merit Systems Protection Board and the Office of Special Counsel, to provide for the protection of certain disclosures of information by Federal employees, and for other purposes; to the Committee on Governmental Affairs.

Mr. AKAKA. Mr. President. Today I rise to introduce legislation reauthorizing the Office of Special Counsel, OSC, and the Merit Systems Protection Board, MSPB. These two agencies safeguard the merit system principles and protect Federal employees who step forward to disclose government waste, fraud, and abuse.

The Office of Special Counsel protects Federal employees and applicants from reprisal for whistleblowing and other prohibited personnel practices. OSC serves as a safe and secure channel for Federal workers who wish to disclose violations of law, gross mismanagement or waste of funds, abuse of authority, and a specific danger to the public health and safety. In addition, OSC enforces and provides advisory opinions regarding the Hatch Act, which restricts the political activities of Federal employees. It also protects the rights of Federal employee, military veterans and reservists under the Uniformed Services Employment and Reemployment Rights Act of 1994.

The Merit Systems Protection Board monitors the Federal Government's merit-based system of employment by hearing and deciding appeals from Federal employees regarding job removal and other major personnel actions. The Board also decides other types of civil service cases, reviews regulations of the Office of Personnel Management, and conducts studies of the merit systems. Together, OSC and MSPB act as stalwarts of justice for the dedicated men and women who serve the public.

In addition to reauthorizing these two important agencies, my bill would restore congressional intent regarding who is entitled to relief under the Whistleblower Protection Act, WPA. On several occasions, Congress has had to revisit the WPA to close loopholes in the law. Congress has been forced to specify that "any" disclosure truly means "any" disclosure. This is regardless of the setting of the disclosure, the form of the disclosure, or the person to whom the disclosure is made.

Since Congress amended the WPA in 1994, the Federal Circuit Court of Appeals, which has sole jurisdiction over the WPA, has continued to disregard clear statutory language that the Act covers disclosures such as those made to supervisors, to possible wrongdoers, or as part of an employee's job duties.

In order to protect the statute's foundation that "any" lawful disclosure that an employee or applicant reasonably believes is credible evidence of

waste, fraud, abuse, or gross mismanagement is covered by the WPA, language in this bill codifies the repeated and unconditional statements of congressional intent and legislative history. It specifically covers any disclosure of information without restriction to time, place, form, motive, or context, 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 any violation of any law, rule, or regulation, or other misconduct specified.

The bill also addresses another burden created by the Federal Circuit not found in the Whistleblower Protection Act. In interpreting the meaning of "reasonable belief," the Federal Circuit held that the reasonableness of the whistleblower's belief that the government violated the law or engaged in gross mismanagement must first begin with a presumption that public officers performed their duties correctly, fairly, in good faith, and in accordance with the law. However, this presumption can only be overcome by "irrefragable proof" to the contrary. The irrefragable standard is impossible to overcome and has a chilling effect on those who would disclose government wrongdoing. As such, this new provision states that any presumption that a public officer has performed their duties in good faith must be overcome by substantial evidence.

My bill also codifies an "anti-gag" provision that Congress has passed annually since 1988 as part of its appropriations process. The yearly appropriations language bars agencies from implementing or enforcing any non-disclosure policy, form, or agreement that does not contain specified language preserving open government statutes such as the WPA, the Military Whistleblower Protection Act, and the Lloyd LaFollette Act, which prohibits discrimination against government employees who communicate with Congress. Moreover, Congress unanimously has supported the concept that Federal employees should not be subject to restraint nor suffer retaliation for disclosing wrongdoing.

Now more than ever, Federal employees must feel comfortable coming forward with information concerning violations of law or actions that could cause substantial harm to public safety. We must support the brave men and women who come forward to report wrongdoing. We must ensure that such acts of bravery are not rewarded with retaliation.

Protection of Federal whistleblowers is a bipartisan effort. Enactment of the original bill in 1989 and the 1994 amendments enjoyed unanimous bicameral and bipartisan support. More recently, Senators LEVIN and GRASSLEY joined me in introducing S. 995, which makes many of the same amendments to the WPA as this bill. I urge my colleagues to join with me in clarifying the WPA

and supporting the reauthorization of two very important agencies.

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

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

S. 2829

#### SECTION 1. AUTHORIZATION OF APPROPRIATIONS.

(a) MERIT SYSTEMS PROTECTION BOARD.—Section 8(a)(1) of the Whistleblower Protection Act of 1989 (5 U.S.C. 5509 note) is amended by striking "1998, 1999, 2000, 2001 and 2002" and inserting "2003, 2004, 2005, 2006, and 2007".

(b) OFFICE OF SPECIAL COUNSEL.—Section 8(a)(2) of the Whistleblower Protection Act of 1989 (5 U.S.C. 5509 note) is amended by striking "1993, 1994, 1995, 1996, and 1997," and inserting "2003, 2004, 2005, 2006, and 2007".

(c) EFFECTIVE DATE.—This section shall take effect on October 1, 2002.

#### SEC. 2. DISCLOSURE OF VIOLATIONS OF LAW; RETURN OF DOCUMENTS.

Section 1213(g) of title 5, United States Code, is amended—

(1) in paragraph (1), by striking the last sentence; and

(2) by striking paragraph (3) and inserting the following:

"(3) If the Special Counsel does not transmit the information to the head of the agency under paragraph (2), the Special Counsel shall inform the individual of—

"(A) the reasons why the disclosure may not be further acted on under this chapter; and

"(B) other offices available for receiving disclosures, should the individual wish to pursue the matter further."

#### SEC. 3. PROTECTION OF CERTAIN DISCLOSURES OF INFORMATION BY FEDERAL EMPLOYEES.

(a) CLARIFICATION OF DISCLOSURES COVERED.—Section 2302(b)(8) of title 5, United States Code, is amended—

(1) in subparagraph (A)—

(A) by striking "which the employee or applicant reasonably believes evidences" and inserting ", without restriction to time, place, form, motive, context, 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"; and

(B) in clause (i), by striking "a violation" and inserting "any violation";

(2) in subparagraph (B)—

(A) by striking "which the employee or applicant reasonably believes evidences" and inserting ", without restriction to time, place, form, motive, context, 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 to the Special Counsel, or to the Inspector General of an agency or another employee designated by the head of the agency to receive such disclosures, of information that the employee or applicant reasonably believes is evidence of"; and

(B) in clause (i), by striking "a violation" and inserting "any violation"; and

(3) by adding at the end the following:

"(C) a 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 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;

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

“(III) an employee of the executive branch or Congress who has the appropriate security clearance for access to the information disclosed.”.

(b) COVERED DISCLOSURES.—Section 2302(b) of title 5, United States Code, is amended—

(1) in the matter following paragraph (12), by striking “This subsection” and inserting the following:

“This subsection”; and

(2) by adding at the end the following:

“In this subsection, the term ‘disclosure’ means a formal or informal communication or transmission.”.

(c) REBUTTABLE PRESUMPTION.—Section 2308(b) of title 5, United States Code, is amended by adding after the matter following paragraph (12) (as amended by subsection (b) of this section) the following:

“For purposes of paragraph (8), any presumption relating to the performance of a duty by an employee may be rebutted by substantial evidence.”.

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

(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 (xii) and inserting after clause (x) the following:

“(xi) the implementation or enforcement of any nondisclosure policy, form, or agreement; and”.

(e) AUTHORITY OF SPECIAL COUNSEL RELATING TO CIVIL ACTIONS.—

(1) REPRESENTATION OF SPECIAL COUNSEL.—Section 1212 of title 5, United States Code, is amended by adding at the end the following:

“(h) Except as provided in section 518 of title 28, relating to litigation before the Supreme Court, attorneys designated by the Special Counsel may appear for the Special Counsel and represent the Special Counsel in any civil action brought in connection with section 2302(b)(8) or subchapter III of chapter 73, or as otherwise authorized by law.”.

(2) JUDICIAL REVIEW OR MERIT SYSTEMS PROTECTION BOARD DECISIONS.—Section 7703 of title 5, United States Code, is amended by adding at the end the following:

“(e) The Special Counsel may obtain review of any final order or decision of the Board by filing a petition for judicial review in the United States Court of Appeals for the Federal Circuit if the Special Counsel determines, in the discretion of the Special Counsel, that the Board erred in deciding a case arising under section 2302(b)(8) or subchapter III of chapter 73 and that the Board’s decision will have a substantial impact on the enforcement of section 2302(b)(8) or subchapter III of chapter 73. If the Special Counsel was not a party or did not intervene in a matter before the Board, the Special Counsel may not petition for review of a Board decision under this section unless the Special Counsel first petitions the Board for 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 proceedings before the Court of Appeals. The granting of the petition for judicial review shall be at the discretion of the Court of Appeals.”.

#### SEC. 4. NONDISCLOSURE POLICIES, FORMS, AND AGREEMENTS.

(a) IN GENERAL.—Each agreement in Standard Forms, 312 and 4414 of the Government and any other nondisclosure policy, form, or agreement 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.”

Any nondisclosure policy, form, or agreement that does not contain the above statement may not be implemented or enforced to the extent that it conflicts with language in the above statement.

(b) PERSONS OTHER THAN FEDERAL EMPLOYEES.—Notwithstanding subsection (a), 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.

#### STATEMENTS ON SUBMITTED RESOLUTIONS

#### SENATE RESOLUTION 312—RECOGNIZING THE IMPORTANCE OF AMERICAN HISTORY AND DESIGNATING JULY AS “AMERICAN HISTORY MONTH”

Mr. DEWINE (for himself and Mr. LEIBERMAN) submitted the following resolution; which was referred to the Committee on the Judiciary.

S. RES. 312

Whereas July is an important month in American history because of the signing of the Declaration of Independence and various other events that have added to the rich heritage of our Nation;

Whereas learning American history is vital to attaining citizenship in our democratic republic;

Whereas we must encourage Americans of all ages and ethnicities to learn about the history and heritage of the United States;

Whereas the Senate recognizes the historical achievements and contributions of Americans from all walks of life, races, and ethnic groups;

Whereas an individual who has a strong knowledge of American history is likely to have a deeper appreciation of the need for historic preservation of properties, building, and artifacts;

Whereas many of the educators, parents, and concerned citizens of our Nation have cited a lack of American history knowledge in students of all ages from across the country;

Whereas surveys have shown that the next generation of American leaders and citizens is in danger of losing a fundamental knowledge of American history;

Whereas 1 survey showed that only 23 percent of college seniors could correctly identify James Madison as the “Father of the Constitution”, and 26 percent of those same students mistakenly thought that the Articles of Confederation established the division of powers between the States and the Federal Government; and

Whereas Congress affirmed its commitment to the teaching of American history by appropriating \$100,000,000 to teaching American history through the Leave No Child Behind Act of 2001 (Public Law 107-110): Now, therefore, be it

*Resolved*, That the Senate—

(1) designates July as “American History Month”; and

(2) recognizes that “American History Month” is an important time to recognize, reflect, and affirm the importance of learning and appreciating the history of the United States; and

(3) encourages parents and educators to actively expose children to the importance of American history and historic preservation.

#### SENATE RESOLUTION 313—TO REFER S. 2833, ENTITLED “A BILL FOR THE RELIEF OF THE HEIRS OF CLARK M. BEGGERLY, SR., OF JACKSON COUNTY, MISSISSIPPI” TO THE CHIEF JUDGE OF THE UNITED STATES COURT OF FEDERAL CLAIMS FOR A REPORT THEREON

Mr. COCHRAN submitted the following resolution; which was referred to the Committee on the Judiciary:

S. RES. 313

*Resolved*, That—

(a) S. 2833, entitled “A bill for the relief of the heirs of Clark M. Beggerly, Sr., of Jackson County, Mississippi” now pending in the Senate, together with all the accompanying papers, is referred to the chief judge of the United States Court of Federal Claims; and

(b) the chief judge shall—

(1) proceed according to the provisions of sections 1492 and 2509 of title 28, United States Code; and

(2) report back to the Senate, at the earliest practicable date, providing—

(A) such findings of fact and conclusions that are sufficient to inform Congress of the nature, extent, and character of the claim for compensation referred to in such bill as a legal or equitable claim against the United States or a gratuity; and

(B) the amount, if any, legally or equitably due from the United States to the heirs of Clark M. Beggerly, Sr., of Jackson County, Mississippi.