

IDEA bill, S. 939, which will finally make Congress pay its promised share of special education funding. I have long been a supporter of fully funding IDEA and I am pleased today to support this important piece of legislation.

Nearly 30 years ago, Congress made a promise to our schools to share the cost of special education. The promise was simple—the Federal Government pays 40 percent of the excess cost of educating a special needs child. Sadly, we have yet to fulfill that promise and I believe it is well beyond time that Congress relieves our State and local governments of the financial burden they have been forced to shoulder. This bill will fully fund IDEA in 8 years by increasing funding by \$2 billion annually for 7 years and \$1.8 billion in 2011. This funding will have a tremendous impact in my home State of Kansas. The Kansas Department of Education estimates that this legislation will provide the State an increase of \$19 million in overall funding for IDEA each year. Kansas schools may then spend these newly freed-up dollars in areas where they need it the most, such as professional development, title I programs, or technology.

In the State of Kansas, special education costs have skyrocketed to over \$530 million for 2002. Unfortunately, the Federal Government only picks up about 16 percent of that figure, leaving 84 percent of the funding to State and local governments. In dollar amounts, the State of Kansas pays over \$251 million in special education costs, while local schools must fork out an additional \$200 million to cover the costs of special education. This is unacceptable. IDEA is the “granddaddy” of all unfunded mandates and I can assure my colleagues that funding IDEA at the promised level of 40 percent would not only relieve schools in my home State of Kansas, but would also relieve schools in each and every State in our great Nation. I stress to my colleagues that there is no better time than now to help our local schools by fully funding IDEA.

I would like to share with my colleagues the current budget situation in Kansas. Like many other States, Kansas is facing ominous cuts in the State budget, and schools across the State are worried about shortfalls in their own budgets. Rural schools all over Kansas are considering consolidation to alleviate budget woes. Schools in western Kansas are cutting the school week to 4 days in order to save money. Schools in eastern Kansas are cutting academic programs in order to cut costs. If Congress would pay its promised share of special education funding, then our schools would be able to use those freed-up dollars for other educational needs. We are talking about real dollars for real people. Fully funding IDEA is not just something that Congress should do, it is something we promised to do.

I would like to thank my colleagues for the commitment to education fund-

ing. I do believe that Congress is on the right path to fully funding IDEA, and I am pleased that education funding has been a top priority over the last few years. Since 2000, Federal special education funding has increased by approximately 58 percent and title I funding has increased by nearly 45 percent.

I am proud of this support for education funding, and I urge my colleagues to continue on the course to fully funding IDEA. It is our duty to once and for all meet the promise we made nearly 30 years ago.

#### MORATORIUM ON EXECUTIONS IN ILLINOIS

Mr. FEINGOLD. Mr. President, I want to take a moment to comment on Governor Rod Blagojevich's recent decision to continue the moratorium on executions in Illinois initiated by former Governor George Ryan. The leadership we have now seen from two successive Illinois Governors—one Republican and one Democrat—sends the right message for the Nation. This is not a partisan issue. All Americans who value fairness and justice can agree that executions should not take place—in Illinois or elsewhere in the Nation—under a flawed death penalty system, a system that risks executing the innocent.

Three years ago, Governor Ryan, a death penalty supporter, made national headlines when he was the first Governor in the Nation to place a moratorium on executions. He did so after considering irrefutable evidence that the system in Illinois risks executing the innocent. Since the death penalty was reinstated in Illinois in 1977, Illinois had executed 12 people. But, during this same time, another 13 death row inmates were found to be innocent and to have been wrongfully sentenced to death.

Governor Ryan did not stop there. He created an independent, blue ribbon commission, including former U.S. Attorney Thomas Sullivan, one of our former colleagues, Senator Paul Simon, and lawyer and novelist Scott Turow. He instructed the commission, composed of death penalty proponents and opponents, to review the State's death penalty system and to advise him on how to reduce the risk of executing the innocent and to ensure fairness in the system.

After an exhaustive 2-year study, the commission issued a comprehensive report and set forth 85 recommendations for reform of the Illinois death penalty system. These recommendations address difficult issues like inadequate defense counsel, executions of the mentally retarded, coerced confessions, and the problem of wrongful convictions based solely on the testimony of a jailhouse snitch or a single eyewitness. The commission's work is the first and, so far, only comprehensive review of a death penalty system undertaken by a State or Federal Government in the modern death penalty era.

Earlier this year, the Illinois legislature responded with a bill that included some of the recommendations of the commission. Governor Blagojevich, however, rightly reviewed the legislation and determined that the bill did not go far enough. And last week, he concluded that executions should not resume.

But, the series of mistakes that led to a moratorium are not unique to Illinois. Death penalty systems across the country are fraught with errors and the risk that an innocent person may be condemned to die. There have been over 800 executions in the United States in the modern death penalty era. During that same period, 107 people who were sentenced to death were later exonerated. That means that for approximately every eight persons executed, an innocent person has been wrongly condemned to die.

Evidence that race plays a role in who is sentenced to death continues to mount. A recent report on race and the death penalty released last week by Amnesty International tells us that while African Americans comprise 12 percent of the U.S. population, they are more than 40 percent of the current death row population and one in three of those executed since 1977. The U.S. could soon carry out the 300th execution of an African American inmate since executions resumed in 1977. The report also highlighted that 80 percent of people executed in the modern death penalty era in the U.S. were executed for murders involving white victims, even though blacks and whites are murder victims in almost equal numbers in our society.

We should all be startled by this statistic. There is something particularly insidious, particularly un-American about racial discrimination in the application of the death penalty. A system that treats people differently in administering the ultimate punishment based on their race or the race of the victim is immoral.

In the face of these and other startling pieces of evidence that the death penalty is broken, our Nation is not, as it should be, ceasing or slowing the use of capital punishment. Instead, executions are being carried out at an alarming pace. Already this year, 28 people have been executed, and over the last 6 years, the average annual number of executions is well above that of previous years in the modern death penalty era. In 1999 alone, 99 people were executed in America.

It is my hope that we do not break any records this year. With an eight-to-one executed-to-exonerated ratio, however, we are clearly in a race—a race against time. Because with 107 death row inmates exonerated to date, I do not think any American can be sure that an innocent person has not been executed in this country, and we most certainly cannot guarantee that it will never happen. We must suspend executions and study the flaws in the

death penalty system. I have introduced the National Death Penalty Moratorium Act, which would place a moratorium on Federal executions and call on the States to do the same, while an independent, blue ribbon commission conducts a thorough study of the flaws in the system.

As public concern about the accuracy and fairness of the use of the death penalty deepens, I commend Governor Blagojevich for taking this opportunity to continue Illinois' commitment to justice and fairness.

Governor Blagojevich did the right thing last week when he decided to continue the death penalty moratorium in Illinois. We in the Senate have a unique opportunity to look to the State of Illinois as a model for the Nation in ensuring fairness in the Federal death penalty system. I urge my colleagues to co-sponsor the National Death Penalty Moratorium Act.

The time for a moratorium is now.

#### INTERPRETATION OF TITLE IX OF THE SARBANES-OXLEY ACT OF 2002, H.R. 3763

Mr. BIDEN. Mr. President, on April 11, 2003, I submitted for inclusion in the official RECORD of the Senate a section-by-section discussion and analysis of title IX of the Sarbanes-Oxley Act of 2002, P.L. 107-204. At the end of that statement, the full text of a letter to me from the United States Department of Justice, dated December 26, 2002, should have appeared. In that letter, Assistant Attorney General Daniel J. Bryant confirms my view that the Department may use existing criminal provisions to prosecute corporate executives who fail to file a certification attesting to the accuracy of a company's financial reports, pursuant to Section 906 of the Sarbanes-Oxley Act. Unfortunately, the letter was inadvertently excluded from the RECORD, so I now resubmit it and ask unanimous consent that its text be printed in the RECORD.

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

U.S. DEPARTMENT OF JUSTICE,  
OFFICE OF LEGISLATIVE AFFAIRS,  
Washington, DC, December 26, 2002.

Hon. JOSEPH R. BIDEN, Jr.,  
U.S. Senate,  
Washington, DC.

DEAR SENATOR BIDEN: This is in response to your letter of October 16, 2002 to the Attorney General and the Chairman of the Securities and Exchange Commission regarding enforcement of section 906 of the Sarbanes-Oxley Act of 2002 ("the Act"). The Department thanks you for your leadership in corporate governance reform and, in particular, commends your efforts as primary author of section 906 of the Act (18 U.S.C. §1350), which requires corporate executives to make certain certifications with respect to their financial statements.

The Department is fully committed to using the tools Congress provided in the Act in our continuing efforts to uncover and punish corporate fraud. As the President noted when he signed the Act, "this law gives my administration new tools for enforcement. We will use them to the fullest." In keeping with the President's statement, Attorney

General Ashcroft has directed all United States Attorneys and FBI Special-Agents-in-Charge to review the Act and to take all appropriate steps to implement its provisions fully and expeditiously.

The Department continues to consult with the Commission staff regarding certain legal and technical issues associated with implementing section 906. In particular, questions have arisen regarding the form, location, method of filing and scope of the certification required under section 906. We want to assure you that the Department will continue to work closely with the Commission and we are confident that these questions will be resolved to your satisfaction and with the full input of all affected parties in the near future.

The Department does believe that it is in a position to respond to one question you raised in your letter. You have inquired whether covered individuals who willfully fail to file the certifications required by 18 U.S.C. §1350(a) are subject to the penalties provided in 15 U.S.C. §78ff. While the facts and circumstances determine which tools our prosecutors utilize in each individual case, we believe that section 78ff's criminal penalties are applicable when an individual willfully fails to file the required certification under section 906.

Section 1350(a) of the Act mandates that each periodic report containing financial statements filed by an issuer with the Securities and Exchange Commission pursuant to Sections 13(a) or 15(d) of the Securities Exchange Act of 1934 shall be accompanied by the required written certification. In addition, Section 3(d) of the Act states that: "a violation by any person of this Act, any rule or regulation of the Commission issued under this Act, or any rule of the Board shall be treated for all purposes in the same manner as a violation of the Securities Exchange Act of 1934 (15 U.S.C. §§78a et seq.) or the rules and regulations issued thereunder, consistent with the provisions of this Act, and any such person shall be subject to the same penalties, and to the same extent, as for a violation of that Act or such rules and regulations."

The criminal provisions of the Securities Exchange Act of 1934 (15 U.S.C. §78ff) state that "any person who willfully violates any provision of this chapter (other than section 78dd-1), or any rule or regulation thereunder the violation of which is made unlawful or the observance of which is required under the terms of this chapter . . . shall upon conviction be fined not more than \$1,000,000, or imprisoned not more than 10 years, or both." Therefore, as you have suggested, the Department may utilize section 78ff's criminal penalties to prosecute executives who violate the Sarbanes-Oxley Act by willfully failing to file section 906's required certifications.

The Department believes that it is critically important to work with the Commission to resolve the remaining issues you have raised in a timely and thoughtful manner, and we are committed to moving forward expeditiously to achieve consensus on those issues. We also will continue, where appropriate, to formulate guidance for our prosecutors and investigators who must enforce the new law and to provide clarity for the corporate community which must comply with it.

We appreciate your attention to these issues, and look forward to continuing to work with you and others in Congress on the implementation of the Sarbanes-Oxley Act.

Sincerely,

DANIEL J. BRYANT,  
Assistant Attorney General.

#### HONORING OUR ARMED FORCES

Mr. LIEBERMAN. Mr. President, I rise to pay tribute to the second fallen

son of Connecticut in the war against Saddam Hussein's regime in Iraq: Marine CPL Kemaphoom "Ahn" Chanawongse, 1st Battalion, 2nd Marine Regiment, 2nd Marine Expeditionary Brigade, United States Marine Corps, who was killed in an ambush outside of Nasiriyah, Iraq, on March 23rd, 2003. This brave young man was just 22 when he lost his life.

Corporal Chanawongse had been listed as missing in action for 3 weeks: three weeks of what I can only imagine was, for his family, a time of unimaginable uncertainty and trepidation. We can only hope that the news of their son's death has given the Corporal's family some sense of closure, and an opportunity to come to terms with his passing with God's help and the help of their friends.

Corporal Chanawongse was not the first to fall for his country in Iraq, and sadly, it is safe to say that his death will not be the last. Nonetheless it is important for us to honor each of the fallen in their own right: to say, "these few gave their lives so that many could live without fear." There is no greater measure of compassion than the sacrifice that Corporal Chanawongse and his fallen brothers- and sisters-in-arms made. In the stories of the fallen soldiers we will learn more about the stuff that this country is made of and the values on which it is built. It is our duty as Americans, and as citizens of the world who believe in freedom, to always remember their names, their faces, and their stories.

This young man and his family came to the United States when he was 8 years old, and they settled in the wonderful town of Waterford, CT. Ahn graduated from Waterford High School in 1999 and joined the Marines shortly thereafter. It is a story similar to the stories of countless other young men and women who choose to serve their country for the chance to be a part of something greater than themselves; for a chance to build a noble life for themselves and the children they might someday have; for a chance to join a select brotherhood and sisterhood that has, throughout history, responded to our country's call and the call of others in danger and distress around the world.

I extend my deepest condolences to Corporal Chanawongse's mother, Tan Patchem, his stepfather, Paul Patchem, and his older brother, Awe. I tell you plainly that I am humbled by your family's sacrifice, and I am honored to pay tribute to your son in this Chamber today.

Paul, Tan, and Awe, our prayers are with you in this difficult time.

#### TRIBUTE TO THE LATE SENATOR SPARK MATSUNAGA

Mr. INOUE. Mr. President, 13 years ago this month, our late colleague, the Honorable Spark Matsunaga of Hawaii, died while serving in office, abruptly cutting short a distinguished 28-year