CHAFEE) was added as a cosponsor of amendment No. 2416 intended to be proposed to S. 1072, a bill to authorize funds for Federal-aid highways, highway safety programs, and transit programs, and for other purposes.

AMENDMENT NO. 2427

At the request of Mr. BINGAMAN, his name was added as a cosponsor of amendment No. 2427 intended to be proposed to S. 1072, a bill to authorize funds for Federal-aid highways, highway safety programs, and transit programs, and for other purposes.

AMENDMENT NO. 2428

At the request of Mr. BINGAMAN, his name was added as a cosponsor of amendment No. 2428 intended to be proposed to S. 1072, a bill to authorize funds for Federal-aid highways, highway safety programs, and transit programs, and for other purposes.

AMENDMENT NO. 2442

At the request of Mr. SARBANES, the name of the Senator from Virginia (Mr. WARNER) was added as a cosponsor of amendment No. 2442 intended to be proposed to S. 1072, a bill to authorize funds for Federal-aid highways, highway safety programs, and transit programs, and for other purposes.

AMENDMENT NO. 2482

At the request of Mr. CORZINE, his name was added as a cosponsor of amendment No. 2482 proposed to S. 1072, a bill to authorize funds for Federal-aid highways, highway safety programs, and transit programs, and for other purposes.

AMENDMENT NO. 2511

At the request of Mr. BINGAMAN, his name was added as a cosponsor of amendment No. 2511 intended to be proposed to S. 1072, a bill to authorize funds for Federal-aid highways, highway safety programs, and transit programs, and for other purposes.

STATEMENTS ON INTRODUCED BILLS AND JOINT RESOLUTIONS

By Mrs. MURRAY (for herself, Mr. LEAHY, and Mr. REID):

S. 2068. A bill to enhance and improve benefits for members of the National Guard and Reserves who serve extended periods on active duty, and for other purposes; to the Committee on Finance.

Mrs. MURRAY. Mr. President, I rise this evening to introduce a very important piece of legislation that will support hundreds of thousands of Americans who are making great sacrifices for our country. This bill will enhance the benefits that are offered to the brave men and women of the National Guard and Reserves and their families when they are called to service.

The latest figures from the Pentagon show that more than 194,000 Guard and Reserves are currently serving on active duty. We have come to rely greatly on our Guard and Reserve Forces for extended durations. It is now time that we provide them with the support that is available to our regular services.

Nationwide, we are experiencing the largest activation of Guard and Reserves since the Korean war. In my home State this is the largest activation of these brave men and women since World War II.

Guard and Reserves make up almost 40 percent of the total U.S. force in Iraq. They play a critical role in our operations in Afghanistan, and they support a tremendous number of our homeland security missions.

The Guard's 81st Armor Brigade is sending 3,600 brave Washington State citizens to Iraq in the next few weeks. I had the pleasure of meeting with many of these soldiers and their families in early January. During my visit with these soldiers, I heard many concerns about the well-being of their families who are going to be left to shoulder tremendous responsibilities while they are away. Many were concerned that they would leave before they could help their spouse find affordable child care. Others were concerned that their children would have to go to a new doctor who accepts TRICARE, and that type of change when one parent is overseas and far away can be very scary for a young child.

My visit with the families offered a window into what they are facing as their loved ones serve on extended deployments. Their families were concerned about the loss of income between their spouse's civilian salary and their active-duty salary.

Some of our activated soldiers were in school. Their families were concerned that they would have to begin repaying student loans while their loved ones served in Iraq.

It is vital that Congress take steps to ensure all members of our Armed Forces and their families are taken care of, especially during extended active-duty deployments and upon their return home. Unfortunately, that has not always been the case. Veterans who volunteered or were drafted to serve our country were promised health care and other benefits. When they returned home they found those promises were not kept. In recent years, the administration has barred certain veterans from enrolling in the VA. The President's budget request for this year would require some veterans to pay additional fees for the services they are currently able to receive.

This evening, I am introducing a comprehensive piece of legislation that will minimize the challenges at home when members of the Guard and Reserve leave their jobs, their schools, their homes, and their families to protect our homeland and fight terrorism. This legislation helps families by extending the Family and Medical Leave Act to allow spouses to take time away from their job to put together a single-parent household and prepare for their transition.

My bill will help Guard and Reserve families with children by providing access to child care, especially during times of extended active duty. This provision would allow nonworking spouses with children to work while their spouse is being deployed, making child care more affordable.

Education is a key part of this proposal. I have heard from Guard members who are worried that they had to leave their university to go to Iraq for a year. We have to ensure that when they return to school it will be without penalty, and that their student loans are deferred during their extended deployment.

Several soldiers who work in the high-tech field said to me:

> Eighteen months away from my job in the high tech field means that I will not be ready to go back into my position when I return.

That is why my bill will extend and update the GI Bill benefits for Guard and Reserve to keep better pace with the rising costs of education. This will encourage education and provide a competitive edge for Guard and Reserves when they return home to the private sector.

My proposal will improve health care coverage by providing access to TRICARE for all members of the Guard and Reserves and their families, regardless of employment or insurance status. TRICARE only works if you are in a community that has TRICARE available. Guard and Reserves who are mobilized for extended periods need the option to maintain their private health care plans. So my proposal provides that option and covers their premiums during periods of extended deployment.

Many members of the Guard and Reserves who are mobilized are seeing a huge decrease in their pay while they serve our country on active duty. My proposal ensures pay equity for Federal employees called to duty and provides tax credits to employers to encourage their support of activated Guard and Reserves.

My proposal also reduces the age for Guard and Reserves to receive retirement pay to age 55.

I am very concerned that we are burning up our Guard and Reserve units by placing a serious strain on their families and their finances. These brave men and women need the same kind of support that our regular services have when they are called away from their families and their jobs for extended deployments. By addressing these shortfalls now, we give the Guard and Reserves a valuable tool for recruiting and retaining the best and the brightest soldiers in the world.

This bill tells our Guard and Reserve members that they can serve our country overseas, even on long deployments, and know that their families will be financially secure and able to get child care and health care. Spouses can take time off from work to prepare for a long deployment. In addition, Guard members won't lose their place at a university, and they won't be charged interest or have to repay loans until they resume their studies.

I hope we can pass this bill and do everything we can to lessen the burden

on Americans who are already sacrificing so much for our security. We are asking so much of our Guard and Reserve members and their families. We have an obligation to make it easier for their spouses and children during these extended long deployments.

I hope my colleagues will support this legislation and help us move it quickly through the Senate.

I yield the floor.

By Mr. HAGEL:

S. 2070. A bill to amend the Animal Health Protection Act to direct the Secretary of Agriculture to implement the United States Animal Identification Plan, and for other purposes; to the Committee on Agriculture, Nutrition, and Forestry.

Mr. HAGEL. Mr. President, I rise today to introduce legislation to provide the U.S. Department of Agriculture (USDA) the authority to implement the U.S. Animal Identification Plan (USAIP) for livestock, as well as strengthen existing laws that protect against the spread of disease in livestock.

Consumers in the U.S. and around the world must have confidence in our food supply. The discovery of the first case of Bovine Spongiform Encephalopathy (BSE) in the United States has raised serious concerns regarding the effectiveness of current U.S. disease management measures as well as closed U.S. beef markets overseas.

For years there have been efforts to develop a national animal identification plan. The National Identification Task Force was created in 2002. The task force brought together livestock industry representatives with USDA to participate in the development of a comprehensive plan known as the United States Animal Identification Plan (USAIP). The final development and implementation of this plan is needed now to bolster confidence in the U.S. livestock industry.

In a recent briefing regarding the completion of the investigation into the U.S. BSE case, Dr. Ron DeHaven, Chief Veterinary Officer with USDA, referring to the unfound cattle from Canada, was quoted as saying, ''Many of those animals were moved into the United States a number of years ago, and so because of that timeframe some of the paper trail has gotten cold.'' A national animal identification plan would ensure the trail would not go cold in the future.

My legislation will direct USDA to focus its resources on implementing the USAIP for beef and dairy cattle to ensure a disease tracking system is in place in a timely manner. This bill also provides financial assistance to aid in the cost of producer compliance.

In addition, this legislation directs the Food and Drug Administration (FDA) to strengthen the enforcement of current livestock feed ban laws. This measure will help control disease threats to U.S. livestock, provide privacy protection for the information collected and used in the plan, and implement an effective plan for tracking animals.

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. 2070

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

SECTION 1. SHORT TITLE.

This Act may be cited as the ''United States Animal Identification Plan Implementation Act''.

SEC. 2. ANIMAL IDENTIFICATION PLAN.

Section 10411 of the Animal Health Protection Act (7 U.S.C. 8310) is amended by adding at the end the following:

''(f) ANIMAL IDENTIFICATION PLAN.—

''(1) DEFINITION OF ANIMAL IDENTIFICATION PLAN.—

''(A) IN GENERAL.—The term 'animal identification plan' means the United States Animal Identification Plan developed by the National Animal Identification Development Team.

''(B) INCLUSIONS.—The term 'animal identification plan' includes—

''(i) the operational premises identification allocation system;

''(ii) the operational certification system able to certify State premises and animal number allocation systems;

''(iii) the operational premises repository; and

''(iv) the operational identification database.

''(2) IMPLEMENTATION PRIORITY.—Subject to the availability of appropriations and cost-share agreements, the Secretary shall implement the animal identification plan—

''(A) for beef and dairy cattle that are at least 30 months old on the date of enactment of this subsection, not later than 60 days after the date of enactment of this subsection;

''(B) for all other beef and dairy cattle, not later than 90 days after the date of the enactment of this subsection;

''(C) for all other ruminate livestock, not later than 180 days after the date of enactment of this subsection; and

''(D) for all other livestock, not later than 1 year after the date of enactment of this subsection.

''(3) PARTICIPATION BY STATE AND THIRD-PARTY VENDORS.—The Secretary may enter into agreements to collect information for the animal identification plan with States or third-party vendors that meet the requirements of the animal identification plan.

''(4) CONFIDENTIALITY OF INFORMATION.—

''(A) IN GENERAL.—In implementing the animal identification plan, the Secretary shall ensure the privacy of producers by—

''(i) collecting only data necessary to establish and maintain the animal identification plan; and

''(ii) maintaining the confidentiality of information collected from producers.

''(B) NONAPPLICATION OF FOIA.—Section 552 of title 5, United States Code, shall not apply to the animal identification plan.

''(C) APPLICATION OF PRIVACY ACT.—Section 552a of title 5, United States Code, shall apply to any information collected to implement this subsection.

''(5) FINANCIAL ASSISTANCE.—The Secretary may provide financial assistance to producers to assist the producers in complying with the animal identification plan.

''(6) AUTHORIZATION OF APPROPRIATIONS.—

''(A) IN GENERAL.—There is authorized to be appropriated to carry out this subsection $50,000,000 for fiscal year 2004, of which at least $25,000,000 shall be available to carry out paragraph (5).

''(B) USE OF COMMODITY CREDIT CORPORATION FUNDS.—Subject to subparagraph (C), if less than $50,000,000 is appropriated for fiscal year 2004, the Secretary may use up to $50,000,000 of the funds of the Commodity Credit Corporation to carry out this subsection.

''(C) LIMITATION ON AMOUNT OF FUNDS.—No more than $50,000,000 may be used to carry out this subsection.''.

SEC. 3. RUMINANT FEED BAN.

(a) IN GENERAL.—The Secretary of Health and Human Services, acting through the Commissioner of Food and Drugs, shall—

(1) monitor the implementation of section 589.2000 of title 21, Code of Federal Regulations (relating to animal proteins prohibited in ruminant feed);

(2) conduct an annual formal evaluation of the effectiveness and implementation of that section; and

(3) submit to Congress an annual report that describes the formal evaluation.

(b) ENFORCEMENT PLAN.—

(1) IN GENERAL.—The Secretary shall develop and implement a plan for enforcing section 589.2000 of title 21, Code of Federal Regulations.

(2) INCLUSIONS.—The plan shall include—

(A) a hierarchy of enforcement actions to be taken;

(B) a timeframe to allow a person subject to section 589.2000 of title 21, Code of Federal Regulations, to correct violations; and

(C) a timeframe for subsequent inspections to confirm that violations have been corrected.

By Mr. KOHL (for himself and Mr. KENNEDY):

S. 2071. A bill to expand the definition of immediate relative for purposes of the Immigration and Nationality Act; to the Committee on the Judiciary.

Mr. KOHL. Mr. President, I rise today with Senator KENNEDY to introduce the Family Reunification Act, a measure designed to remedy a regrettable injustice in our immigration laws. A minor oversight in the law has led to an unfortunate, and likely unintended, consequence. Parents of U.S. citizens are currently able to enter the country as legal permanent residents, but our laws do not permit their minor children to join them. Simply put, the Family Reunification Act will close this loophole by including the minor siblings of U.S. citizens in the definition of ''immediate relative.'' This legislation will ensure that our immigration laws can better accomplish one of the most important policy goals behind them—the goal of strengthening the family unit.

Congress took an important first step in promoting family reunification when it enacted the Immigration and Nationality Act. By qualifying as ''immediate relatives,'' this law currently offers parents, spouses and children of U.S. citizens the ability to obtain immigrant visas to enter this country legally.

This we can all agree is good immigration policy. Unfortunately, a

''glitch'' in this law has put numerous families in an uncomfortable predicament. One of these unlucky families lives in my home Sate of Wisconsin. Effiong and Ekom Okon, both U.S. citizens by birth and graduates of the University of Wisconsin-Madison, requested that their parents be admitted to the United States from Nigeria as ''immediate relatives.'' The law clearly allows for this. Their father, Leo Okon, has already joined them in Wisconsin, and their mother, Grace, is currently in possession of an immigrant visa. However, Grace is unable to join her husband and sons in the United States because her six-year-old daughter, Daramfon, does not qualify as an ''immediate relative'' under current immigration law. Because it would be unthinkable for her to abandon her small child, Grace has been forced to stay behind in Nigeria, separated from the rest of her family.

This family is truly an American success story, one of first-generation citizens graduating from a top University. They want to continue to contribute to society and want to bring their family with them. Unfortunately, current immigration law only permits some members of their immediate family to join them, but not all. This is clearly wrong.

It is difficult to determine the scope of this problem. Because minor siblings do not qualify for visas, the Department of Homeland Security does not keep track of how many families have been adversely affected. However, DHS employees have assured us that the Okons are not unique. In fact, this is an all too common occurrence. If only one family suffers because of this loophole, changes must be made. The fact that there have been numerous cases demands changes now.

Many parts of our immigration laws are outdated, unfair, and in need of repair. The definition of ''immediate relative'' is no different. Congress' intent when it grated ''immediate relatives'' the right to obtain immigrant visas was to promote family reunification, but the unfortunate oversight highlighted has interfered with many families' opportunities to do just that. The legislation introduced today would expand the definition of ''immediate relatives'' to include the minor siblings of U.S. citizens. By doing so, we can truly provide these families with the ability to reunite and the chance to take advantage of the many great opportunities our country has to offer. This is a simple and modest solution to an unthinkable problem that too many families have already had to face.

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. 2071

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

SECTION 1. IMMEDIATE RELATIVE DEFINITION.

Section 201(b)(2)(A)(i) of the Immigration and Nationality Act (8 U.S.C. 1151(b)(2)(A)(i)) is amended by inserting after ''at least 21 years of age.'' the following: ''In the case of a parent of a citizen of the United States who has a child (as defined in section 101(b)(1)), the child shall be considered, for purposes of this subsection, an immediate relative if accompanying or following to join the parent.''.

By Mr. CRAIG.

S. 2072. A bill to amend the Internal Revenue Code of 1986 to allow a non-refundable tax credit for elder care expenses; to the Committee on Finance.

Mr. CRAIG. Mr. President, today I am introducing the Senior Elder Care Relief and Empowerment Act—the SECURE Act. The SECURE Act provides eligible taxpayers with a non-refundable tax credit equal to 50 percent of qualified expenses incurred on behalf of senior citizens above a $1,000 spending floor.

The Senate Special Committee on Aging has held several hearings on different facets of the growing long-term care crisis in this country. A major concern of mine is that the Federal long-term care policy mix may not have the right incentives—especially when it comes to the tough choices faced by families who want to care for their frail and aging relatives.

Earlier this week, we held a hearing in the Senate Special Committee on Aging on a growing issue of national importance—the issue of family caregiving for America's seniors.

Witnesses at the hearing highlighted the emotional stress and financial challenges faced by family caregivers of aging and vulnerable relatives; and testified favorably about the SECURE Act. Trudy Elliott, a witness at the hearing from North Idaho, talked about the stress and financial challenges she and her husband faced while caring for her mother, sister, and father. Her testimony was very moving. Mrs. Elliott, who also works for a company in the home health field, testified that her experience was not unique. More and more families are facing the stress and financial difficulties that come with caring for their aging parents.

It is critical to note that families, not government, provide 80 percent of long-term care for older persons in the United States. This is an enormous strength of our long-term care system. The U.S. Administration on Aging reports that about 22 million people serve as informal caregivers for seniors with at least one limitation on their activities of daily living.

These caregivers often face extreme stress and financial burden—especially those we call the sandwich generation. The sandwich generation refers to those sandwiched between caring for their aging parents and caring for their own children.

It is difficult for families to balance caring for children and saving or paying for college, while at the same time struggling with financing care for frail and aging parents.

The SECURE Act should not preclude seniors or those near retirement from purchasing long-term care insurance. The Act provides tax relief for high-risk seniors who cannot qualify for long-term care insurance policies.

For many families, the nursing home is the only solution for providing long-term care, and that can be a good choice. For other families, keeping aging and vulnerable relatives in their own home or in the caregiver's home makes sense.

An that is why I am introducing the SECURE Act. Families facing high levels of stress and eldercare expenses deserve tax relief as they freely care for their frail and aging parents.

We also heard from witnesses at the Aging Committee hearing that the SECURE Act will increase the eldercare choices available to families and has the potential to reduce the number of seniors forced to spend down their nest-egg in order to qualify for Medicaid services.

Family caregiving for aging and vulnerable relatives requires a flexible national response to ensure seniors and their families have the most appropriate high quality choices.

I invite my colleagues to cosponsor this compassionate legislation. I ask unanimous consent that the text of the bill and a brief description be printed in the RECORD.

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

S. 2072

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

SECTION 1. SHORT TITLE.

This Act may be cited as the ''Senior Elder Care Relief and Empowerment (SECURE) Act''.

SEC. 2. CREDIT FOR ELDER CARE.

(a) IN GENERAL.—Subpart A of part IV of subchapter A of chapter 1 of the Internal Revenue Code of 1986 is amended by inserting after section 25B the following new section:

''SEC. 25C. ELDER CARE EXPENSES.

''(a) ALLOWANCE OF CREDIT.—In the case of an individual, there shall be allowed as a credit against the tax imposed by this chapter 50 percent of so much of the qualified elder care expenses paid or incurred by the taxpayer with respect to each qualified senior citizen as exceeds $1,000.

''(b) QUALIFIED SENIOR CITIZEN.—For purposes of this section, the term 'qualified senior citizen' means an individual—

''(1) who has attained normal retirement age (as determined under section 216 of the Social Security Act) before the close of the taxable year,

''(2) who is a chronically ill individual (within the meaning of section 7702B(c)(2)(B)), and

''(3) who is—

''(A) the taxpayer,

''(B) a family member (within the meaning of section 529(e)(2)) of the taxpayer, or

''(C) a dependent (within the meaning of section 152) of the taxpayer.

''(c) QUALIFIED ELDER CARE EXPENSES.—For purposes of this section—

''(1) IN GENERAL.—The term 'qualified elder care expenses' means expenses paid or incurred by the taxpayer with respect to the qualified senior citizen for—

''(A) qualified long-term care services (as defined in section 7702B(c)),

''(B) respite care, or

''(C) adult day care.

''(2) EXCEPTIONS.—The term 'qualified elder care expenses' does not include—

''(A) any expense to the extent such expense is compensated for by insurance or otherwise, and

''(B) any expense paid to a nursing facility (as defined in section 1919 of the Social Security Act).

''(d) OTHER DEFINITIONS AND SPECIAL RULES.—

''(1) ADULT DAY CARE.—The term 'adult day care' means care provided for a qualified senior citizen through a structured, community-based group program which provides health, social, and other related support services on a less than 16-hour per day basis.

''(2) RESPITE CARE.—The term 'respite care' means planned or emergency care provided to a qualified senior citizen in order to provide temporary relief to a caregiver of such senior citizen.

''(3) MARRIED INDIVIDUALS.—Rules similar to the rules of paragraphs (2), (3), and (4) of section 21(e) shall apply for purposes of this section.

''(4) NO DOUBLE BENEFIT.—No deduction or other credit under this chapter shall take into account any expense taken into account for purposes of determining the credit under this section.

''(5) IDENTIFYING INFORMATION REQUIRED WITH RESPECT TO SERVICE PROVIDER.—No credit shall be allowed under subsection (a) for any amount paid to any person unless—

''(A) the name, address, and taxpayer identification number of such person are included on the return claiming the credit, or

''(B) if such person is an organization described in section 501(c)(3) and exempt from tax under section 501(a), the name and address of such person are included on the return claiming the credit.

In the case of a failure to provide the information required under the preceding sentence, the preceding sentence shall not apply if it is shown that the taxpayer exercised due diligence in attempting to provide the information so required.

''(6) IDENTIFYING INFORMATION REQUIRED WITH RESPECT TO QUALIFIED SENIOR CITIZENS.—No credit shall be allowed under this section with respect to any qualified senior citizen unless the TIN of such senior citizen is included on the return claiming the credit.''.

(b) CONFORMING AMENDMENTS.—

(1) Section 6213(g)(2)(H) (relating to mathematical or clerical error) is amended by inserting '', section 25C (relating to elder care expenses),'' after ''employment)''.

(2) The table of sections for subpart A of part IV of subchapter A of chapter 1 of the Internal Revenue Code of 1986 is amended by inserting after the item relating to section 25B the following new item:

''Sec. 25C. Elder care expenses.''.

(c) EFFECTIVE DATE.—The amendments made by this section shall apply to expenses incurred in taxable years beginning after December 31, 2003.

SENIOR ELDER CARE RELIEF AND EMPOWERMENT (SECURE) ACT

How is the tax credit structured?

50% tax credit rate for qualified expenses for elder care provided to a qualified senior citizen with long-term care needs, for all qualified expenses above a ''floor'' of $1,000 already provided by the taxpayer (for example: $500 credit on first $2,000 spent; $10,000 credit on first $21,000 spent)

What are the qualifications for beneficiaries of the tax credit?

Must have reached at least normal retirement age under Social Security (currently age 65), Certification by a licensed physican that the cared-for senior is unable to perform at least two basic activities of daily living

Who can claim the credit?

Senior for his/her own care, Taxpaying family member, Any taxpaying family claiming the cared-for senior as a dependent

What are the qualified expenses?

Un-reimbursable costs (those not covered by Medicare or other insurance), Physical assistance with essential daily activities to prevent injury, Long-term care expenses including normal household services, Architectural expenses necessary to modify the senior's residence, Respite care, Adult daycare, Assisted living services (non-housing related expenses), Independent living, Home care, Home health care.

By Mr. REID (for himself, Mrs. LINCOLN, and Mr. BREAUX):

S. 2075. A bill to amend title III of the Public Health Service Act to include each year of fellowship training in geriatric medicine or geriatric psychiatry as a year of obligated service under the National Health Corps Loan Repayment Program; to the Committee on Health, Education, Labor, and Pensions.

Mr. REID. Mr. President, as our Nation's 76 million Baby Boomers near retirement age, the number of Americans over age 65 will double to 70 million—one-fifth of the population. Americans older than 85 represent the fastest growing segment of this population and membership in this once exclusive demographic group is projected to grow from four million Americans today to an estimated 19 million by 2050.

Unfortunately, our health care system is ill prepared to handle the strain of this enormous senior population, largely because we have a critical shortage of geriatricians. Fewer than 9,000 geriatricians practice in the U.S., far below the 20,000 or more needed to effectively care for the Nation's booming population of seniors. Ironically, the number of geriatricians is expected to shrink as many of these doctors retire at the same time baby boomers start qualifying for Medicare in large numbers.

America must plan for the burdens the baby boomers demographic shift will place on our health care system and health care providers. Our first step is ensuring the country has an adequate number of well-trained geriatricians.

I first introduced legislation to address the national shortage of geriatricians during the 105th Congress. While I am encouraged that greater attention has been focused on this issue, little has been accomplished to improve the shortage of geriatricians.

Today, I am re-introducing legislation that will encourage more doctors to become certified in geriatrics. The Geriatricians Loan Forgiveness Act would forgive $20,000 of education debt incurred by medical students for each year of advanced training required to obtain a certificate of added qualifications in geriatric medicine or psychiatry.

Geriatric medicine is the foundation of a comprehensive health plan for our most vulnerable seniors. Geriatrics, by focusing on assessment and care coordination, promotes preventive care and improves patients' quality of life by allowing them greater independence and eliminating unnecessary and costly trips to the hospital or institutions. But this kind of specialized care is complicated and demanding. Many doctors inclined to study and practice geriatric medicine are dissuaded from doing so because treating the elderly takes more time and carries financial disincentives for doctors.

Medical training takes time, so we need to lay the groundwork now to have enough qualified geriatricians in place in ten years from now. This legislation is a commonsense approach and cost-effective investment. We must take these steps today to meet our needs for tomorrow.

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. 2075

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

SECTION 1. SHORT TITLE.

This Act may be cited as the ''Geriatricians Loan Forgiveness Act of 2004''.

SEC. 2. NATIONAL HEALTH SERVICE CORPS LOAN REPAYMENT PROGRAM.

(a) IN GENERAL.—Section 338B(g) of the Public Health Service Act (42 U.S.C. 254l–1(g)) is amended by adding at the end the following:

''(5) OBLIGATED SERVICE.—

''(A) IN GENERAL.—For purposes of this section, each year of training in geriatric medicine or geriatric psychiatry that is required in order to obtain a certificate of added qualification in geriatric medicine or geriatric psychiatry shall be deemed to be a year of obligated service.

''(B) LIMITATIONS.—

''(i) PAYMENTS.—Notwithstanding the first sentence of paragraph (2)(A), for the year of obligated service described in subparagraph (A), the Secretary may pay up to $20,000 on behalf of the individual for loans described in paragraph (1).

''(ii) INDIVIDUALS.—The number of fellowship years in geriatric medicine or geriatric psychiatry that are deemed to be a year of obligated service under this section shall not exceed 400 in any calendar year.''.

(b) EFFECTIVE DATE.—

(1) IN GENERAL.—The amendment made by subsection (a) shall apply to applications submitted to the Secretary of Health and Human Services under section 338B of the Public Health Service Act (42 U.S.C. 254l–1) on or after 1 year after the date of enactment of this Act.

(2) FIRST YEAR OF PROGRAM.—For the period beginning on the date of enactment of this Act and ending on December 31 of the

calendar year in which such enactment occurs, the Secretary of Health and Human Services shall ratably reduce the maximum number of fellowship years in geriatric medicine or geriatric psychiatry that may be deemed to be a year of obligated service under section 338B(g)(5)(B)(ii) of the Public Health Service Act (42 U.S.C. 254l–1(g)(5)(B)(ii)) (as added by subsection (a)) to reflect the portion of the year that the amendment made by subsection (a) is in effect.

By Mr. BAUCUS:

S. 2076. A bill to amend title XI of the Social Security Act to provide direct congressional access to the office of the Chief Actuary in the Centers for Medicare & Medicated Services; to the Committee on Finance.

Mr BAUCUS. Mr. President, I rise today to introduce the Congressional Access to the CMS Chief Actuary Act of 2004.

This legislation provides Congress with greater access to cost estimates and other data produced and collected by the Center for Medicare and Medicaid Services (CMS) Office of the Actuary. The Office of the Actuary is a group of about 50 actuaries, economists, and other health professionals who provide non-partisan analyses of Medicare and other federally financed health care programs.

Recently we learned that the administration's cost estimate of the Medicare Prescription Drug, Improvement, and Modernization Act of 2003 is $534 billion over 10 years, nearly $140 billion higher than the estimates produced by the Congressional Budget Office (CBO). Contrary to statements by some members of the administration, Congress did not have this estimate when it voted on this bill.

It would be disingenuous of me to state that the higher cost estimate is my biggest concern. I have voted in the past for prescription drug bills estimated to cost more than $534 billion. And in the conference negotiations on this bill, I urged my colleagues to make changes until the final hours of the negotiations that would have added additional costs to the legislation.

My greatest concern with the higher estimate is one of transparency. More specifically, I am concerned about the degree to which access to the CMS career actuaries has been restricted by this administration. Had Congress been able to freely communicate with the career actuaries during last year's Medicare negotiations, it would not have been surprised by the higher estimates. Moreover, I believe that input from the CMS actuaries could have informed the conferees and perhaps improved certain aspects of the bill in a positive way. And why shouldn't Congress have access to all available information on legislation under consideration?

The restrictions placed on congressional access to the CMS actuary is in clear violation of the report language that was included in the Balanced Budget Act of 1997 (BBA 97). The 1997 BBA established the Office of the Actuary within CMS, which was then called the Health Care Financing Administration. Report language accompanying the legislation stated, ''The independence of the Office of the Actuary with respect to providing assistance to the Congress is vital. The process of monitoring, updating, and reforming the Medicare and Medicaid programs is greatly enhanced by the free flow of actuarial information from the Office of the Actuary to the committees of jurisdiction in the Congress.''

While Congress intended that the Office of the Actuary would provide it with cost and other data as requested, a free flow of information has not occurred—particularly over the past year. I requested, as well as several of my colleagues, information from the Office of Actuary throughout last year's Medicare deliberations; however, our requests were unfulfilled. I do not fault the professionals in the Office of the Actuary. Rather, I believe the lack of response was the result of inappropriate restrictions placed on the office by administration political officials.

In order for Congress to craft good legislation, we need access to the most up-to-date actuarial and cost information. CBO will always remain Congress's official score-keeper. But a second independent assessment is critical, particularly if the two estimates differ, as was the case of the recent Medicare legislation. Congress needs to understand the reasons for the differences, and only then can it make fully-informed decisions. And again, I ask, why shouldn't Congress have access to all available information on legislation under consideration?

The legislation that I introduce today is very simple. It codifies the 1997 BBA report language to require that Congress have direct and open access to information and estimates produced by the independent CMS career actuaries. The bill's purpose is to improve Congress's ability to write good legislation and to make well-informed decisions.

I want to be clear. The administration's higher cost-estimate does not change my support of this Medicare legislation. I continue to be a proud supporter of the bill.

But I have also pledged to work to improve its flaws and to address its shortcomings. Any efforts to improve this bill will require vigilant oversight of its implementation and will require having access to the latest information about the program's participation, payment, and costs. The CMS career actuaries will play a fundamental role in the data collection. The administration's past practices of restricting and censoring this information cannot continue.

This bill is about improving transparency in government and decision making. I urge all of my colleagues to support this legislation.

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. 2076

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

SECTION 1. SHORT TITLE.

This Act may be cited as the ''Congressional Access to the CMS Chief Actuary Act of 2004''.

SEC. 2. DIRECT CONGRESSIONAL ACCESS TO THE OFFICE OF THE CHIEF ACTUARY IN THE CENTERS FOR MEDICARE & MEDICAID SERVICES.

(a) FINDINGS.—Congress finds the following:

(1) In creating the Office of the Actuary in the Health Care Financing Administration (now known as the Centers for Medicare & Medicaid Services) with the enactment of the Balanced Budget Act of 1997, Congress intended that the Office would provide independent advice and analysis to assist in the development of health care legislation.

(2) While the Congressional Budget Office would continue to serve as the official source for cost estimates for Congress, Congress created the Office of the Actuary in order to have—

(A) an additional, independent source for estimates in the development of health care legislation; and

(B) access to more detailed actuarial data and assumptions related to program participation, payments, and costs.

(3) While the joint explanatory statement of the committee of conference contained in the conference report for the Balance Budget Act of 1997 provided a clear statement of the Congressional intent described in paragraphs (1) and (2), Congressional access to the Office of the Actuary has been inappropriately restricted over the past year.

(b) ACCESS.—Section 1117(b) of the Social Security Act (42 U.S.C. 1317(b)), as amended by section 900(c) of the Medicare Prescription Drug, Improvement, and Modernization Act of 2003 (Public Law 108–173), is amended by adding at the end the following new paragraph:

''(4)(A) In exercising the duties of the office of the Chief Actuary, the Chief Actuary shall provide the committees of jurisdiction of Congress with independent counsel and technical assistance with respect to the programs under titles XVIII, XIX, and XXI.

''(B) The Chief Actuary may directly provide Congress with reports, comments on, and estimates of, the financial effects of potential legislation, and other actuarial information related to the programs described in subparagraph (A). No officer or agency of the United States may require the Chief Actuary to submit to any officer or agency of the United States for approval, comments, or review, prior to the provision to Congress of such reports, comments, estimates, or other information.''.

By Ms. MIKULSKI (for herself, Mr. SARBANES, Mr. HATCH, and Mr. BIDEN):

S. 2081. A bill to amend the Office of National Drug Control Policy Act Reauthorization Act of 1998 to ensure that adequate funding is provided for certain high intensity drug trafficking areas; to the Committee on the Judiciary.

Ms. MIKULSKI. Mr. President, today I rise to introduce legislation which will help America's families who are fighting to drive drugs and violence out of their communities.

The Dawson Family Community Protection Act of 2004 asks the Federal Government to do its fair share by devoting some of its drug fighting resources to communities with high intensity drug trafficking and severe safety concerns. That means dedicating much needed resources to help communities fight the infiltration of drugs and the drug dealers that plague their communities and threaten the safety of their children.

This bill is named in memory of a heroic Baltimore family—the Dawsons—whose active role in trying to rid their neighborhood of drugs and violence cost them their lives. Carnell and Angela Dawson lived in the community of Oliver in East Baltimore and raised five children there.

Every day Angela, known as ''Angel,'' walked her children to school, she made sure that they only rode their bikes on the sidewalk so they would be safe. Her husband, Carnell, worked hard as a construction worker to provide for his family. Both parents were devoted to their children and wanted to make a better life for them.

The house they lived in on the corner of N. Eden Street made Angel nervous. It had too many windows and she was scared that a stray bullet would come in and harm one of her children. The street also worried Angel. There were lots of young teens dealing drugs. She wanted the drugs out of her neighborhood, away from her children and away from all the neighbors' children. She fought every day to make that happen, calling the police when she saw dealers, or violence on her block. She was persistent and the neighbors knew it. They called her a great mother—''someone who stood up for what she believed in.'' Sadly, that persistence and those beliefs cost her and her family their lives.

Angel had repeatedly called the police in September of 2002 to report drug activity. Then on October 3—someone threw two Molotov cocktails through the kitchen window of their house—causing a fire but no injuries. They were sending a message. Two weeks later that message was unmistakable as someone broke through their front door and poured gasoline throughout the first floor of their house and lit a match. Within minutes the house was in flames and it was impossible to escape. Although fire fighters arrived almost immediately—they could not save the family. Angel and five of her children had perished and her husband Carnell had jumped from the second story with burns all over his body—he survived only a week in the hospital.

Many in the neighborhood thought it was the final message.

The Dawsons are the kind of neighbors we all would want. They cared about the community and wanted to make it better and safer. They represent brave families all over America who are trying to take back their neighborhoods, who have worked with law enforcement and their neighbors to make their communities safer.

Too many of these families have had to face threats and retaliation and sadly even murder in their attempt to help their loved ones and neighbors. They work hard, send their kids to school to get an education and play by the rules—yet they live in communities that are unsafe because they are infested with drugs and drug dealers.

We need to get assistance to these communities, as they are working hard to make life better, they need the resources of law enforcement and government to make that a reality. We have to help communities that are trying to help themselves, communities that are trying get rid of drugs, rehabilitate and educate drug dealers and most importantly end violence and protect their neighborhood children.

That is why today, I join with my colleagues, Senator SARBANES, HATCH and BIDEN in introducing this legislation that provides $5 million to high intensity drug traffic areas with severe safety and illegal drug distribution problems—to support communities that are affected by drug trafficking and to encourage their cooperation with local, State and Federal law enforcement officials.

These funds also help to protect families that cooperate, families that report crimes and drugs and families that seek to make a difference in their communities. These resources help law enforcement provide witness protection and address safety issues in these communities. The funding only goes to neighborhoods—like the East Baltimore neighborhood that the Dawson's lived in—with severe neighborhood safety and illegal drug distribution problems.

For these communities it's time for the Federal Government to step up and do more, especially when average citizens put their lives on the line every day trying to stop the violence and crime that comes when the illegal drug trade invades their neighborhoods.

This bill will give citizens and law enforcement the tools they need to make sure the community is safe and those doing the reporting are protected. In honor of the Dawson family, I ask my colleagues to support this important legislation.

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. 2081

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

SECTION 1. SHORT TITLE.

This Act may be cited as the ''Dawson Family Community Protection Act''.

SEC. 2. FINDINGS.

Congress finds the following:

(1) In the early morning hours of October 16, 2002, the home of Carnell and Angela Dawson was firebombed in apparent retaliation for Mrs. Dawson's notification of police about persistent drug distribution activity in their East Baltimore City neighborhood.

(2) The arson claimed the lives of Mr. and Mrs. Dawson and their 5 young children, aged 9 to 14.

(3) The horrific murder of the Dawson family is a stark example of domestic narco-terrorism.

(4) In all phases of counter-narcotics law enforcement—from prevention to investigation to prosecution to reentry—the voluntary cooperation of ordinary citizens is a critical component.

(5) Voluntary cooperation is difficult for law enforcement officials to obtain when citizens feel that cooperation carries the risk of violent retaliation by illegal drug trafficking organizations and their affiliates.

(6) Public confidence that law enforcement is doing all it can to make communities safe is a prerequisite for voluntary cooperation among people who may be subject to intimidation or reprisal (or both).

(7) Witness protection programs are insufficient on their own to provide security because many individuals and families who strive every day to make distressed neighborhoods livable for their children, other relatives, and neighbors will resist or refuse offers of relocation by local, State, and Federal prosecutorial agencies and because, moreover, the continued presence of strong individuals and families is critical to preserving and strengthening the social fabric in such communities.

(8) Where (as in certain sections of Baltimore City) interstate trafficking of illegal drugs has severe ancillary local consequences within areas designated as High Intensity Drug Trafficking Areas, it is important that supplementary HIDTA Program funds be committed to support initiatives aimed at making the affected communities safe for the residents of those communities and encouraging their cooperation with local, State, and Federal law enforcement efforts to combat illegal drug trafficking.

SEC. 3. FUNDING FOR CERTAIN HIGH INTENSITY DRUG TRAFFICKING AREAS.

(a) IN GENERAL.—Section 707(d) of the Office of National Drug Control Policy Act Reauthorization Act of 1998 (21 U.S.C. 1706(d); Public Law 105–277; 112 Stat. 2681-670) is amended to read as follows:

''(d) AUTHORIZATION AND USE OF FUNDS.—

''(1) AUTHORIZATION.—There are authorized to be appropriated $5,000,000 to be used in high intensity drug trafficking areas with severe neighborhood safety and illegal drug distribution problems to—

''(A) ensure the safety of neighborhoods and the protection of communities, including the prevention of the intimidation of potential witnesses of illegal drug distribution and related activities; and

''(B) combat illegal drug trafficking through such methods as the Director considers appropriate, such as establishing or operating (or both) a toll-free telephone hotline for use by the public to provide information about illegal drug-related activities.

''(2) USE OF FUNDS.—The Director shall ensure that no Federal funds appropriated for the High Intensity Drug Trafficking Program are expended for the establishment or expansion of drug treatment programs.''.

By Mrs. BOXER:

S. 2083. A bill to amend the Public Health Service Act and the Employee Retirement Income Security Act of 1974 to protect consumers in managed care plans and other health coverage; to the Committee on Health, Education, Labor, and Pensions.

Mrs. BOXER. Mr. President, according to a Kaiser Family Foundation and Harvard School of Public Health survey of non-elderly Americans with private health insurance, one-half reported that they had a problem with their health insurance plans in the previous year. They cited delays and denials of coverage or care as their two most common problems. They also said they worried that if they became sick, their health plans would be more concerned about saving money than providing the best treatment. For those in managed care plans, such as HMOs, over two-thirds had this concern.

And they have good reason to be concerned. Let me tell you about two of the many people, who were hurt when HMO decided it needed to save money. Ruby Calad had a hysterectomy and her doctor recommended that she stay in the hospital longer than a day. Cigna, Ruby's insurance company said one day was enough. So Ruby went home, but she was soon in the emergency room because she had developed serious complications. Had Ruby been able to stay in the hospital longer, as recommended by her doctor, this would not have happened.

Juan Davila suffers from diabetes and arthritis. His doctor prescribed VIOXX for his arthritis because it had a lower rate of bleeding and ulcers than drugs on the formulary developed by Aetna. But instead of approving the VIOXX, Juan was required to enter a step program and try two other medications before VIOXX could be approved. He was given naprosyn—a cheaper drug—and three weeks later was rushed to the hospital. He had developed bleeding ulcers, which caused a heart attack and internal bleeding. Juan survived but now cannot take any pain medication that is absorbed by the stomach.

These examples show why medical decisions should be made by doctors, not HMO bureaucrats, and in 2001, the Senate, in a bipartisan vote of 59–36, passed S. 1052, the Bipartisan Patient Protection Act to make sure that happened. Yet, intransigence from the House leadership and the White House prevented that bill from becoming law. Nearly 3 years later, we still have not acted. So, today, I am introducing the exact same bipartisan bill that passed in the Senate in 2001.

This bill provides comprehensive protections to all Americans in all health plans. It says to all Americans who have health insurance, you have rights and protections. It says to HMOs, you have responsibilities and will be held accountable for your wrongful and harmful actions.

This bill ensures that patients have the right to have medical decisions made by their doctors and not HMO bureaucrats. Patients will have the right to see a specialist and go to the closest emergency room for treatment. They will be able to keep the same doctor throughout their medical treatment and appeal adverse claim decisions to an independent reviewer. And if they are injured by a decision made by the HMO, they will have the right to hold their HMO accountable in a court.

A meaningful patients bill of rights is long overdue. I urge my colleagues to support this legislation.

By Mr. ALEXANDER (for himself, Mr. CARPER, Mr. DORGAN, Mrs. FEINSTEIN, Mr. GRAHAM of Florida, Mr. HOLLINGS, Mrs. HUTCHISON, Mr. INOUYE, Mr. LAUTENBERG, Mr. ROCKEFELLER, and Mr. VOINOVICH):

S. 2084. A bill to revive and extend the Internet Tax Freedom Act for 2 years, and for other purposes; to the Committee on Commerce, Science, and Transportation.

Mr. ALEXANDER. Mr. President, 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. 2084

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

SECTION 1. SHORT TITLE.

This Act may be cited as the ''Internet Tax Ban Extension and Improvement Act''.

SEC. 2. 2-YEAR EXTENSION OF MORATORIUM.

Section 1101(a) of the Internet Tax Freedom Act (47 U.S.C. 151 nt) is amended—

(1) by striking ''2003—'' and inserting ''2005:'';

(2) by striking paragraph (1) and inserting the following:

''(1) Taxes on Internet access.''; and

(3) by striking ''multiple'' in paragraph (2) and inserting ''Multiple''.

SEC. 3. EXCEPTIONS FOR CERTAIN TAXES.

The Internet Tax Freedom Act (47 U.S.C. 151 note) is amended—

(1) by redesignating section 1104 as section 1105; and

(2) by inserting after section 1103 the following:

''SEC. 1104. EXCEPTIONS FOR CERTAIN TAXES.

''(a) PRE-OCTOBER, 1998, TAXES.—Section 1101(a) does not apply to a tax on Internet access (as that term was defined in section 1104(5) of this Act as that section was in effect on the day before the date of enactment of the Internet Tag Ban Extension and Improvement Act) that was generally imposed and actually enforced prior to October 1, 1998, if, before that date, the tax was authorized by statute and either—

''(1) a provider of Internet access services had a reasonable opportunity to know by virtue of a rule or other public proclamation made by the appropriate administrative agency of the State or political subdivision thereof, that such agency has interpreted and applied such tag to Internet access services; or

''(2) a State or political subdivision thereof generally collected such tag on charges for Internet access.

''(b) TAXES ON TELECOMMUNICATIONS SERVICES.—Section 1101 (a) does not apply to a tag on Internet access that was generally imposed and actually enforced as of November 1, 2003, if, as of that date, the tag was authorized by statute and either—

''(1) a provider of Internet access services had a reasonable opportunity to know by virtue of a rule or other public proclamation made by the appropriate administrative agency of the State or political subdivision thereof, that such agency has interpreted and applied such tax to Internet access services; or

''(2) a State or political subdivision thereof generally collected such tax on charges for Internet access service.''.

SEC. 4. CHANGE IN DEFINITIONS OF INTERNET ACCESS SERVICE.

(a) IN GENERAL.—Paragraph (3)(D) of section 1101(e) of the Internet Tax Freedom Act (47 U.S.C. 151 note) is amended by striking the second sentence and inserting ''The term 'Internet access service' does not include telecommunications services, except to the extent such services are purchased, used, or sold by an Internet access provider to connect a purchaser of Internet access to the Internet access provider.''.

(b) CONFORMING AMENDMENTS.—

(1) Paragraph (2)(B)(i) of section 1105 of that Act, as redesignated by subsection (a), is amended by striking ''except with respect to a tax (on Internet access) that was generally imposed and actually enforced prior to October 1, 1998,''.

(2) INTERNET ACCESS.—Paragraph (5) of section 1105 of that Act, as redesignated by subsection (a), is amended by striking the second sentence and inserting ''The term 'Internet access' does not include telecommunications services, except to the extent such services are purchased, used, or sold by an Internet access provider to connect a purchaser of Internet access to the Internet access provider.''.

(3) Paragraph (10) of section 1105 of that Act, as redesignated by subsection (a), is amended to read as follows:

''(10) TAX ON INTERNET ACCESS.—

''(A) IN GENERAL.—The term 'tax on Internet access' means a tax on Internet access, regardless of whether such tax is imposed on a provider of Internet access or a buyer of Internet access and regardless of the terminology used to describe the tax.

''(B) GENERAL EXCEPTION.—The term 'tax on Internet access' does not include a tax levied upon or measured by net income, capital stock, net worth, or property value.''.

SEC. 5. ACCOUNTING RULE.

The Internet Tax Freedom Act (47 U.S.C. 151 note) is amended by adding at the end the following:

''SEC. 1106. ACCOUNTING RULE.

''(a) IN GENERAL.—If charges for Internet access are aggregated with and not separately stated from charges for telecommunications services or other charges that are subject to taxation, then the charges for Internet access may be subject to taxation unless the Internet access provider can reasonably identify the charges for Internet access from its books and records kept in the regular course of business.

''(b) DEFINITIONS.—In this section:

''(1) CHARGES FOR INTERNET ACCESS.—The term 'charges for Internet access' means all charges for Internet access as defined in section 1105(5).

''(2) CHARGES FOR TELECOMMUNICATIONS SERVICES.—The term 'charges for telecommunications services' means all charges for telecommunications services except to the extent such services are purchased, used, or sold by an Internet access provider to connect a purchaser of Internet access to the Internet access provider.''.

SEC. 6. EFFECT ON OTHER LAWS.

The Internet Tax Freedom Act (47 U.S.C. 151 note), as amended by section 4, is amended by adding at the end the following:

''SEC. 1107. EFFECT ON OTHER LAWS.

''(a) UNIVERSAL SERVICE.—Nothing in this Act shall prevent the imposition or collection of any fees or charges used to preserve and advance Federal universal service or similar State programs—

''(1) authorized by section 254 of the Communications Act of 1934 (47 U.S.C. 254); or

''(2) in effect on February 8, 1996.

''(b) 911 AND E–911 SERVICES.—Nothing in this Act shall prevent the imposition or collection, on a service used for access to 911 or E–911 services, of any fee or charge specifically designated or presented as dedicated by a State or political subdivision thereof for the support of 911 or E–911 services if no portion of the revenue derived from such fee or charge is obligated or expended for any purpose other than support of 911 or E–911 services.

''(c) NON-TAX REGULATORY PROCEEDINGS.—Nothing in this Act shall be construed to affect any Federal or State regulatory proceeding that is not related to taxation.''.

SEC. 7. EFFECTIVE DATE.

The amendments made by this Act take effect November 1, 2003.

Mr. ROCKEFELLER. Mr. President, I am pleased to cosponsor legislation introduced today that will reinstate a moratorium on State and local taxation of access to the Internet. Senators ALEXANDER and CARPER have worked very hard to craft legislation that will protect Americans from being taxed for using the Internet, while still respecting the States' need to raise revenue from traditional telecommunications taxes. As a fellow former Governor, I have been pleased to join them in this effort and hope that all of my colleagues who have supported a moratorium on taxation of Internet access will support this bill.

Until last fall, there was a moratorium in place prohibiting taxation of Internet access. Unfortunately, that lapsed before Congress was able to craft an extension. One of the reasons that extending the moratorium has been difficult is that we want to apply the lessons learned over the last few years. For example, the previous moratorium was not technology-neutral. That is, people who accessed the Internet using a DSL connection were not always treated the same as those who used dial-up service or a cable modem. This was clearly an unintended consequence of the way that the previous legislation was drafted. In addition, over the last few years, we have seen many States struggle with enormous budget deficits. Recognizing that a downturn in the economy can compromise a state's ability to provide vital services, including schools, firefighters, and police officers, we do not want to undermine any state's revenue base.

With these lessons in mind, Senators ALEXANDER, CARPER and others have crafted an extension of the previous moratorium that would ensure that no States impose new taxes on Internet access. The legislation specifically requires that all technologies be treated equally. And because the moratorium is limited to 2 years, it ensures that Congress will revisit the issue periodically as technologies develop and circumstances change.

As a former Governor, I do not take lightly any Federal action that limits the options available to local and State elected officials I recognize how hard it is to balance a State budget and am only willing to support a moratorium on Internet access taxes because I believe that we are dealing with a unique new service. The Internet has the power to connect Americans as the radio, telephone, and television did for previous generations. By sending e-mails, telecommuting, or banking online, Americans are communicating in a new way that makes our economy more productive and enhances our quality of life. If sparing Internet access from taxation increasing the ability of low and moderate income Americans to join the technology revolution, then it is certainly a worthy public policy goal.

Now, Senators ALLEN and WYDEN have offered an alternative approach. They have proposed legislation that would permanently bar States ad cities from taxing Internet access, and they have defined the service broadly that many experts believe it will undermine some telecommunications taxes on which States currently depend. I am not interested in providing enormous tax breaks to the telecommunications industry, and so I oppose their approach. Taxes that businesses currently pay to access the Internet backbone are reasonable costs of doing business. I hope that my colleagues will not be intimidated by claims that those of us who oppose tax breaks for telecommuncations companies actually want to tax people's e-mails. That is a false argument, and anyone who resorts to it is surely trying to avoid the difficult issues that are addressed by the bill introduced today by Senators ALEXANDER and CARPER.

I would like to make one final point to my colleagues, and that is about fallibility. Every day we get fresh evidence that things are not always as they seemed and that we do not, in fact, know everything we thought we knew. If fallibility is part of being human, then surely it is part of any legislative body. If the moratorium that Congress had imposed 5 years ago had been permanent, then we would have had a difficult time reopening the issue to address the fact that certain technologies were not protected under the act. We ought not make that mistake now by thinking that we can accurately foresee the exciting technological developments on the horizon. It is appropriate for Congress to revisit this issue in two years, as the Alexander-Carper proposal allows.

I hope that all of my colleagues will join me in support of a new temporary moratorium on Internet access taxes. Enacting this legislation quickly will ensure that Americans are not hit with any taxes when they try to log on.

By Mr. REID (for himself and Mr. ENSIGN):

S. 2085. A bill to modify the requirements of the land conveyance to the University of Nevada at Las Vegas Research Foundation; to the Committee on Energy and Natural Resources.

Mr. REID. Mr. President, I rise today for myself and Senator ENSIGN to introduce the University of Nevada at Las Vegas Research Foundation Reinvestment Act, which enhances the long-term viability of the University of Nevada at Las Vegas by allowing proceeds from leases of the University of Nevada at Las Vegas Research Foundation property to be reinvested.

Mr. President, through provisions of the Southern Nevada Public Land Management Act of 1998, the Clark County Department of Aviation acquired land that was formerly owned by the Federal Government. A subsequent law, the Clark County Conservation of Public Land and Natural Resources Act of 2002, transferred this land to the University of Las Vegas Research Foundation for construction of a research park and technology center.

Under current law, only 10 percent of the proceeds from the sale, lease, or conveyance of this land may be reinvested. This restriction hinders efforts to promote research and development at the research park.

Mr. President, the bill that I am introducing today amends the Clark County Conservation of Public Land and Natural Resources Act of 2002 to allow the proceeds of the Foundation's research park leases to be used to carry out the foundation's research mission.

The foundation's research park and technology center in the greater Las Vegas area will enhance the research mission of the university, increasing the potential for the high-tech industry and entrepreneurship in the State. It provides the public with opportunities for high-tech education and research, and at the same time provides the State with opportunities for competition and economic development in the high-tech field. It is imperative that sufficient funds are always available to maintain and enhance the center.

Mr. President, I ask unanimous consent that the full 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. 2085

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

SECTION 1. SHORT TITLE.

This Act may be cited as the ''University of Nevada at Las Vegas Research Foundation Reinvestment Act''.

SEC. 2. CONVEYANCE TO THE UNIVERSITY OF NEVADA AT LAS VEGAS RESEARCH FOUNDATION.

Section 702(b)(2) of Public Law 107–282 (116 Stat. 2013) is amended by striking ''that if the land'' and all that follows through ''conveyed by the Foundation.'' and inserting the following: ''that provides that (except in a case in which the gross proceeds of a sale, lease, or conveyance are provided to the Foundation to carry out the purposes for which the Foundation was established), if the land described in paragraph (3) is sold, leased, or otherwise conveyed by the Foundation—''.

By Mr. GRAHAM of Florida:

S. 2087. A bill to amend the Internal Revenue Code of 1986 to expand the Hope Scholarship and Lifetime Learning Credits; to the Committee on Finance.

Mr. GRAHAM of Florida. Mr. President, today, I am introducing legislation that increases the Federal commitment to help families meet the increasing costs of higher education.

In today's economy—as well as with life in general—getting a higher education is essential. A college educated male worker can expect to earn $29,000 more each year than his counterpart without such education. Over a working career, this edge results in more than $1 million. For women, the importance is even more pronounced. A college-educated woman can expect to earn twice what her counterpart with only a high school diploma will earn (Condition of Education 2000, U.S. Department of Education). Perhaps Federal Reserve Chairman Greenspan put it best when he said ''we must ensure that our whole population receives an education that will allow full and continuing participation in this dynamic period of American economic history.''

Having college-educated parents also forms the foundation for better lives for their children. Census data reveals that children of college-educated parents are twice as likely to go to college, as are those with parents who did not go to college. Research also suggest that children of college-educated parents are healthier and perform better academically than children of those with only a high school diploma.

Recognizing the importance of an advanced degree is only part of the battle. Attendance at a college or university is an expensive proposition for most American families. Worse yet, it is getting even more expensive. According to the Congressional Research Service, increases in tuition over the last twenty years on a constant dollar basis have outpaced growth in the average household's income. The difficulty of paying for college is particularly acute for lower-income families. In 1980, college costs consumed 32 percent of the average household income for a family in the lowest income quintile. By 2000, the percentage of that family's income needed to pay for college increased to 56 percent.

In the 2001–2002 school year, about $90 billion was awarded in student aid. The Federal Government provided seventy percent of this aid through appropriations, guaranteed loans, and tax credits. Although this $90 billion represents a substantial increase in the amount of aid provided by the Federal Government from just ten years ago, the Federal Government can and should do more.

A recent report by the Congressional Budget Office examined the cost of attending colleges and universities and how those costs are borne. CBO estimates that the average annual cost of attendance at public four-year colleges in the 1999–2000 academic year was nearly $11,300 after taking into consideration that portion of the costs that are covered by the institutions themselves or as a subsidy from State legislatures. Parents and students on average are responsible for nearly three-quarters of this amount, which is a significant financial hurdle, particularly for low-income families.

Under current law the maximum credit available under the HOPE Scholarship tax credit program is $1,500 assuming the student has at least $2,000 of tuition costs. The bill I am introducing increases the credit percentage to 100 percent of tuition costs and increases the maximum credit available to $2,500.

Second, the bill extends the HOPE Scholarship credit to cover four years of higher education. It recognizes that our economy increasingly demands that tomorrow's worker has a college degree, and to get such a degree requires at least four years. We shouldn't have a program designed to assist students in obtaining those degrees that abandons them mid-stream.

Third, the legislation makes the HOPE credit refundable. Refundability is the only way to provide financial assistance through the tax code to families with low incomes. And that assistance is sorely needed. According to CBO the HOPE tax credit amounts to $147 of assistance, on average, for families with income less than $30,000.

Finally, the bill creates a mechanism by which families can get the benefits of the credit sooner than it is currently available. Today, families must pay the tuition costs and then file for the credit in April of the following year when they file their income tax returns. The bill directs Treasury to create a program that would allow it to transfer the value of the credit directly to an educational institution on behalf of the taxpayer. A similar mechanism is currently available to those eligible for the tax credit for health insurance costs.

The bill I am introducing today focuses on those students who follow a more traditional path to higher education. I will be introducing separate legislation in the near future that makes changes to the Lifetime Learning credit designed to make it more useful for ''nontraditional'' students.

By Mr. KENNEDY (for himself, Mr. DASCHLE, Mr. REID, Mr. LEAHY, Mr. DODD, Mr. HARKIN, Mr. KERRY, Mr. FEINGOLD, Ms. MIKULSKI, Mr. SCHUMER, Mrs. MURRAY, Mr. DURBIN, Mr. EDWARDS, Mrs. CLINTON, Mr. SARBANES, Mr. LAUTENBERG, Mr. CORZINE, Ms. LANDRIEU, and Ms. CANTWELL):

S. 2088. A bill to restore, reaffirm, and reconcile legal rights and remedies under civil rights statutes; to the Committee on Health, Education, Labor, and Pensions.

Mr. KENNEDY. Mr. President, it is a privilege to join my colleagues, Senators DASCHLE, REID, LEAHY, DODD, HARKIN, KERRY, FEINGOLD, MIKULSKI, SCHUMER, MURRAY, DURBIN, EDWARDS, CLINTON, SARBANES, LAUTENBERG, CORZINE, LANDRIEU, and CANTWELL today in introducing the ''Fairness and Individual Rights Necessary to Ensure a Stronger Society: the Civil Rights Act of 2004''. This legislation, the ''Fairness Act,'' is vital to realizing the full promise of, the numerous Federal laws that have been enacted to guarantee civil rights and fair labor practices for all our citizens.

2004 is an especially significant year in commemorating the historic landmarks in America's struggle for civil rights. On January 15, we celebrated the 75th anniversary of the birth of Dr. Martin Luther King. On May 17, we will celebrate the 50th anniversary of the Supreme Court's historic decision in Brown v. Board of Education. And on July 2, we will celebrate the 40th Anniversary of the Civil Rights Act of 1964.

These historic milestones make this year not only a time for celebration, but also a time to reaffirm our commitment to the cause of civil rights, which is still the unfinished business of America. We must continue moving toward the goal for which so many have given so much across the years. The bipartisan civil rights laws that have been enacted over the past forty years have made our Nation stronger, better, and fairer. Civil rights is at its heart the ongoing, daily struggle to live up to what is best about America—our fundamental belief in equal opportunity and equal justice for all.

The Fairness Act is part of that continuing effort. Its goal is to guarantee that victims of discrimination and unfair labor practices have access to the courts when necessary to enforce their rights and to obtain effective remedies. As Congress has long realized, full enforcement of civil rights and fair labor practices is possible only if individuals are able to petition the courts. Our proposals will strengthen existing protections, often in cases where the courts have let us down by adopting unacceptably narrow interpretations of existing law. We recognize as well that Congress has not always made its intent clear in enacting specific and detailed provisions of these laws.

Unfortunately, recent court decisions have limited the private right to seek relief and to obtain effective remedies under many of our civil rights and labor laws. Cases like Alexander v. Sandoval and Kimel v. Florida Board of Regents have effectively closed the courthouse door on many persons seeking relief they deserve from discriminatory practices.

Key elements of our proposals will make it easier for working women to enforce their right to equal pay for equal work. We enhance protections against discrimination in federally funded services and enact needed safeguards for students who are harassed because of their national origin, gender, race, or disability. We also make

sure that victims of discrimination and unfair labor practices can receive meaningful damages where appropriate. Our legislation will allow enable members of our armed forces to enforce their federal right to be free from discrimination by States because of their military status.

In addition, our proposals will ensure that older workers who suffer age discrimination are not denied the chance to seek relief merely because they work for a state government. We also stop employers from requiring workers to sign away their right to bring discrimination claims and fair labor claims to court, in order to get a job or keep a job.

These and other important proposals included in the Fairness Act are an essential part of our commitment to make Dr. King's dream a reality for everyone in every community in our country.

To those who say that now is not the time to seek this new progress, we reply, as Dr. King himself replied, now is always the time for civil rights. We know our cause is just. As Dr. King reminded us, ''the arc of the moral universe is long, but it bends toward justice.'' I urge all of my colleagues to support this important legislation.

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. 2088

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

SECTION 1. SHORT TITLE.

This Act may be cited as the ''Fairness and Individual Rights Necessary to Ensure a Stronger Society: Civil Rights Act of 2004''.

SEC. 2. TABLE OF CONTENTS.

The table of contents for this Act is as follows:

TITLE I—NONDISCRIMINATION IN FEDERALLY FUNDED PROGRAMS AND ACTIVITIES

Subtitle A—Private Rights of Action and the Disparate Impact Standard of Proof

SEC. 101. FINDINGS.

Congress finds the following:

(1) This subtitle is made necessary by a decision of the Supreme Court in Alexander v. Sandoval, 532 U.S. 275 (2001) that significantly impairs statutory protections against discrimination that Congress has erected over a period of almost 4 decades. The Sandoval decision undermines these statutory protections by stripping victims of discrimination (defined under regulations that Congress required Federal departments and agencies to promulgate to implement title VI of the Civil Rights Act of 1964 (42 U.S.C. 2000d et seq.)) of the right to bring action in Federal court to redress the discrimination and by casting doubt on the validity of the regulations themselves.

(2) The Sandoval decision attacks settled expectations created by title VI of the Civil Rights Act of 1964, title IX of the Education Amendments of 1972 (also known as the ''Patsy Takemoto Mink Equal Opportunity in Education Act'') (20 U.S.C. 1681 et seq.), the Age Discrimination Act of 1975 (42 U.S.C. 6101 et seq.), and section 504 of the Rehabilitation Act of 1973 (29 U.S.C. 794) (collectively referred to in this Act as the 'covered civil rights provisions'). The covered civil rights provisions were designed to establish and make effective the rights of persons to be free from discrimination on the part of entities that are subject to 1 or more of the covered civil rights provisions, as appropriate (referred to in this Act as 'covered entities'). In 1964 Congress adopted title VI of the Civil Rights Act of 1964 to ensure that Federal dollars would not be used to subsidize or support programs or activities that discriminated on racial, color, or national origin grounds. In the years that followed, Congress extended these protections by enacting laws barring discrimination in federally funded activities on the basis of sex in title IX of the Education Amendments of 1972, age in the Age Discrimination Act of 1975, and disability in section 504 of the Rehabilitation Act of 1973.

(3) From the outset, Congress and the executive branch made clear that the regulatory process would be used to ensure broad protections for beneficiaries of the law. The first regulations promulgated by the Department of Justice under title VI of the Civil Rights Act of 1964 (42 U.S.C. 2000d et seq.) forbade the use of ''criteria or methods of administration which have the effect of subjecting individuals to discrimination . . .'' (section 80.3 of title 45, Code of Federal Regulations) and prohibited retaliation against persons participating in litigation or administrative resolution of charges of discrimination brought under the Act. These regulations were drafted by the same executive branch officials who played a central role in drafting title VI of the Civil Rights Act of 1964. The language used is, in relevant respects, virtually indistinguishable from regulations under the several Acts in effect today. For example, section 304 of the Age Discrimination Act of 1975 (42 U.S.C. 6103) required the Secretary of the Department of Health, Education, and Welfare (HEW) (now Health and Human Services (HHS)) to promulgate ''general regulations'' to effectuate the purposes of the Act. These ''government-wide regulations,'' governing age discrimination in programs and activities receiving Federal financial assistance condemn ''any actions which have [a discriminatory] effect, on the basis of age . . .'' (section 90.12 of title 45, Code of Federal Regulations).

(4) None of the regulations under the laws addressed in this subtitle have ever been invalidated. In 1966, Congress considered and rejected a proposal to invalidate the disparate impact regulations promulgated pursuant to title VI of the Civil Rights Act of 1964 (42 U.S.C. 2000d et seq.). In 1975, Congress reviewed and maintained the implementing regulations promulgated pursuant to title IX of the Education Amendments of 1972 (20 U.S.C. 1681 et seq.), pursuant to a statutory procedure designed to afford Congress the opportunity to invalidate provisions deemed to be inconsistent with congressional intent. The Supreme Court has recognized that Congress's failure to disapprove regulations implies that the regulations accurately reflect congressional intent. North Haven Bd. of Educ. v. Bell, 456 U.S. 512, 533–34 (1982). Moreover, the Supreme Court explicitly recognized congressional approval of the regulations promulgated to implement section 504 of the Rehabilitation Act of 1973 (29 U.S.C. 794) in Consolidated Rail Corp. v. Darrone, 465 U.S. 624, 634 (1984), stating that ''[t]he regulations particularly merit deference in

the present case: the responsible Congressional committees participated in their formation and both these committees and Congress itself endorsed the regulations in their final form.''.

(5) All of the civil rights provisions cited in this section were designed to confer a benefit on persons who were discriminated against. They relied heavily on private attorneys general for effective enforcement. Congress acknowledged that it could not secure compliance solely through enforcement actions initiated by the Attorney General. Newman v. Piggie Park Enterprises, 390 U.S. 400 (1968) (per curiam).

(6) The Supreme Court has made it clear that individuals suffering discrimination under these statutes have a private right of action in the Federal courts, and that this is necessary for effective protection of the law, although Congress did not make such a right of action explicit in the statute. Cannon v. University of Chicago, 441 U.S. 677 (1979).

(7)(A) Notwithstanding the decision of the Supreme Court in Cort v. Ash, 422 U.S. 66 (1975) to abandon prior precedent and require explicit statutory statements of a right of action, Congress and the Courts both before and after Cort have recognized an implied right of action under the above statutes. For example, Congress has consistently provided the means for enforcing the statutes. In 1972, Congress established a right to attorney's fees in private actions brought under title VI of the Civil Rights Act of 1964 (42 U.S.C. 2000d et seq.) and title IX of the Education Amendments of 1972 (20 U.S.C. 1681 et seq.) that continued with enactment of the Civil Rights Attorneys' Fees Awards Act of 1976 (Public Law 94–559; 90 Stat. 2641). In 1973, Congress provided a right to attorney's fees for prevailing parties under section 504 of the Rehabilitation Act of 1973 (29 U.S.C. 794) without expressly stating that there was a right of action. In 1978 Congress amended the Age Discrimination Act of 1975 (42 U.S.C. 6101 et seq.) to include a right to attorney's fees. Because the Age Discrimination Act of 1975 was enacted while the Cort decision was pending, Congress also enacted in 1978 a limited private right of action to enforce the Age Discrimination Act of 1975.

(B) The Senate Report that accompanied the Civil Rights Attorneys' Fees Awards Act of 1976 (Public Law 94–559; 90 Stat. 2641) stated that ''All of these civil rights laws . . . depend heavily upon private enforcement, and fee awards have proved an essential remedy if private citizens are to have a meaningful opportunity to vindicate the important congressional policies which these laws contain.'' S. Rep. No. 94–1011 (1976).

(8) The Supreme Court had no basis in law or in legislative history in Sandoval for denying a right of action under regulations promulgated pursuant to title VI of the Civil Rights Act of 1964 (42 U.S.C. 2000d et seq.) while permitting it under the statute. The regulations were congressionally mandated and their promulgation was specifically directed by Congress under section 602 of that Act (42 U.S.C. 2000d–1) ''to effectuate'' the antidiscrimination provisions of the statute. Title VI of the Civil Rights Act of 1964 stressed the importance of the regulations by requiring them to be ''approved by the President''. Similarly, the regulations promulgated pursuant to title IX of the Education Amendments of 1972 (20 U.S.C. 1681 et seq.) were also congressionally authorized and specifically directed by Congress to effectuate the provisions of the statute. Title IX of the Education Amendments of 1972 stressed the importance of the regulations by requiring them to be ''approved by the President''.

(9) Regulations that prohibit practices that have the effect of discrimination are consistent with prohibitions of disparate treatment that require a showing of intent, as the Supreme Court has acknowledged in the following decisions:

(A) A disparate impact standard allows a court to reach discrimination that could actually exist under the guise of compliance with the law. Griggs v. Duke Power Co., 401 U.S. 424 (1971).

(B) Evidence of a disproportionate burden will often be the starting point in any analysis of unlawful discrimination. Village of Arlington Heights v. Metropolitan Hous. Dev. Corp., 429 U.S. 252 (1977).

(C) An invidious purpose may often be inferred from the totality of the relevant facts, including, where true, that the practice bears more heavily on one race than another. Washington v. Davis, 426 U.S. 229 (1976).

(D) The disparate impact method of proof is critical to ferreting out stereotypes underlying intentional discrimination. Watson v. Fort Worth Bank & Trust, 487 U.S. 977 (1988).

(10) The interpretation of title VI of the Civil Rights Act of 1964 (42 U.S.C. 2000d et seq.), title IX of the Education Amendments of 1972 (20 U.S.C. 1681 et seq.), and other statutes barring discrimination by covered entities as prohibiting practices that have disparate impact and that are not justified as necessary to achieve the goals of the programs or activities supported by the Federal financial assistance is powerfully reinforced by the use of such a standard in enforcing title VII of the Civil Rights Act of 1964 (42 U.S.C. 2000e et seq.). When the Supreme Court wavered on the application of a disparate impact standard under title VII, Congress specifically reinstated it as law in the Civil Rights Act of 1991 (Public Law 102–166; 105 Stat. 1071).

(11) By reinstating a private right of action under title VI of the Civil Rights Act of 1964 (42 U.S.C. 2000d et seq.) and confirming that right for other civil rights statutes, Congress is not acting in a manner that would expose covered entities to unfair findings of discrimination. The legal standard for a disparate impact claim has never been structured so that a finding of discrimination could be based on numerical imbalance alone.

(12) In contrast, a failure to reinstate or confirm a private right of action would leave vindication of the rights to equality of opportunity solely to Federal agencies, which may fail to take necessary and appropriate action because of administrative overburden or other reasons. Action by Congress to specify a private right of action is necessary to ensure that persons will have a remedy if they are denied equal access to education, housing, health, environmental protection, transportation, and many other programs and services by practices of covered entities that result in discrimination.

(13) As a result of the Supreme Court's decision in Sandoval, courts have dismissed numerous claims brought under the regulations promulgated pursuant to title VI of the Civil Rights Act of 1964 (42 U.S.C. 2000d et seq.) that challenged actions with an unjustified discriminatory effect. Although the Sandoval Court did not address title IX of the Education Amendments of 1972 (20 U.S.C. 1681 et seq.), lower courts have similarly dismissed claims under such Act. Courts relying on the Sandoval decision have also dismissed claims seeking redress for unlawful retaliation against persons who opposed prohibited acts, brought actions, or participated in actions, under title VI of the Civil Rights Act of 1964 and title IX of the Education Amendments of 1972. Because judicial interpretation of the Age Discrimination Act of 1975 (42 U.S.C. 6101 et seq.) has tracked that of title VI of the Civil Rights Act of 1964 and title IX of the Education Amendments of 1972, without clarification of Sandoval, plaintiffs run the risk that courts may dismiss claims brought under regulations promulgated pursuant to the Age Discrimination Act of 1975 challenging actions with an unjustified discriminatory effect and claims seeking redress for unlawful retaliation against persons who have brought or participated in actions under the Age Discrimination Act of 1975.

(14) Section 504 of the Rehabilitation Act of 1973 (29 U.S.C. 794) has received different treatment by the Supreme Court. In Alexander v. Choate, 469 U.S. 287 (1985), the Court proceeded on the assumption that the statute itself prohibited some actions that had a disparate impact on handicapped individuals—an assumption borne out by congressional statements made during passage of the Act. In Sandoval, the Court appeared to accept this principle of Alexander. Moreover, the Supreme Court explicitly recognized congressional approval of the regulations promulgated to implement section 504 of the Rehabilitation Act of 1973 in Consolidated Rail Corp. v. Darrone, 465 U.S. 624, 634 (1984). Relying on the validity of the regulations, Congress incorporated the regulations into the statutory requirements of section 204 of the Americans with Disabilities Act of 1990 (42 U.S.C. 12134). Thus it does not appear at this time that there is a risk that the private right of action to challenge disparate impact discrimination under section 504 of the Rehabilitation Act of 1973 will become unavailable.

(15) Since the enactment of title VI of the Civil Rights Act of 1964, title IX of the Education Amendments of 1972, the Age Discrimination Act of 1975, and section 504 of the Rehabilitation Act of 1973, Congress has intended that the prohibitions on discrimination in those provisions include a prohibition on retaliation. The ability to prevent retaliation against persons who oppose any policy or practice prohibited by those provisions, or make a charge, testify, assist, or participate in any manner in an investigation, proceeding, or hearing under those provisions, is essential to realizing the prohibitions on discrimination in those provisions.

(16) The right to maintain a private right of action under a provision added to a statute under this subtitle will be effectuated by a waiver of sovereign immunity in the same manner as sovereign immunity is waived under the remaining provisions of that statute.

SEC. 102. PROHIBITED DISCRIMINATION.

(a) CIVIL RIGHTS ACT OF 1964.—Section 601 of the Civil Rights Act of 1964 (42 U.S.C. 2000d) is amended—

(1) by striking ''No'' and inserting ''(a) No''; and

(2) by adding at the end the following:

''(b)(1)(A) Discrimination (including exclusion from participation and denial of benefits) based on disparate impact is established under this title only if—

''(i) a person aggrieved by discrimination on the basis of race, color, or national origin (referred to in this title as an 'aggrieved person') demonstrates that an entity subject to this title (referred to in this title as a 'covered entity') has a policy or practice that causes a disparate impact on the basis of race, color, or national origin and the covered entity fails to demonstrate that the challenged policy or practice is related to and necessary to achieve the nondiscriminatory goals of the program or activity alleged to have been operated in a discriminatory manner; or

''(ii) the aggrieved person demonstrates (consistent with the demonstration required under title VII with respect to an 'alternative employment practice') that a less discriminatory alternative policy or practice

exists, and the covered entity refuses to adopt such alternative policy or practice.

''(B)(i) With respect to demonstrating that a particular policy or practice causes a disparate impact as described in subparagraph (A)(i), the aggrieved person shall demonstrate that each particular challenged policy or practice causes a disparate impact, except that if the aggrieved person demonstrates to the court that the elements of a covered entity's decisionmaking process are not capable of separation for analysis, the decisionmaking process may be analyzed as one policy or practice.

''(ii) If the covered entity demonstrates that a specific policy or practice does not cause the disparate impact, the covered entity shall not be required to demonstrate that such policy or practice is necessary to achieve the goals of its program or activity.

''(2) A demonstration that a policy or practice is necessary to achieve the goals of a program or activity may not be used as a defense against a claim of intentional discrimination under this title.

''(3) In this subsection, the term 'demonstrates' means meets the burdens of production and persuasion.

''(c) No person in the United States shall be subjected to discrimination, including retaliation, because such person opposed any policy or practice prohibited by this title, or because such person made a charge, testified, assisted, or participated in any manner in an investigation, proceeding, or hearing under this title.''.

(b) EDUCATION AMENDMENTS OF 1972.—Section 901 of the Education Amendments of 1972 (20 U.S.C. 1681) is amended—

(1) by redesignating subsection (c) as subsection (e); and

(2) by inserting after subsection (b) the following:

''(c)(1)(A) Subject to the conditions described in paragraphs (1) through (9) of subsection (a), discrimination (including exclusion from participation and denial of benefits) based on disparate impact is established under this title only if—

''(i) a person aggrieved by discrimination on the basis of sex (referred to in this title as an 'aggrieved person') demonstrates that an entity subject to this title (referred to in this title as a 'covered entity') has a policy or practice that causes a disparate impact on the basis of sex and the covered entity fails to demonstrate that the challenged policy or practice is related to and necessary to achieve the nondiscriminatory goals of the program or activity alleged to have been operated in a discriminatory manner; or

''(ii) the aggrieved person demonstrates (consistent with the demonstration required under title VII of the Civil Rights Act of 1964 (42 U.S.C. 2000e et seq.) with respect to an 'alternative employment practice') that a less discriminatory alternative policy or practice exists, and the covered entity refuses to adopt such alternative policy or practice.

''(B)(i) With respect to demonstrating that a particular policy or practice causes a disparate impact as described in subparagraph (A)(i), the aggrieved person shall demonstrate that each particular challenged policy or practice causes a disparate impact, except that if the aggrieved person demonstrates to the court that the elements of a covered entity's decisionmaking process are not capable of separation for analysis, the decisionmaking process may be analyzed as one policy or practice.

''(ii) If the covered entity demonstrates that a specific policy or practice does not cause the disparate impact, the covered entity shall not be required to demonstrate that such policy or practice is necessary to achieve the goals of its program or activity.

''(2) A demonstration that a policy or practice is necessary to achieve the goals of a program or activity may not be used as a defense against a claim of intentional discrimination under this title.

''(3) In this subsection, the term 'demonstrates' means meets the burdens of production and persuasion.

''(d) No person in the United States shall be subjected to discrimination, including retaliation, because such person opposed any policy or practice prohibited by this title, or because such person made a charge, testified, assisted, or participated in any manner in an investigation, proceeding, or hearing under this title.''.

(c) AGE DISCRIMINATION ACT OF 1975.—Section 303 of the Age Discrimination Act of 1975 (42 U.S.C. 6102) is amended—

(1) by striking ''Pursuant'' and inserting ''(a) Pursuant''; and

(2) by adding at the end the following:

''(b)(1)(A) Subject to the conditions described in subsections (b) and (c) of section 304, discrimination (including exclusion from participation and denial of benefits) based on disparate impact is established under this title only if—

''(i) a person aggrieved by discrimination on the basis of age (referred to in this title as an 'aggrieved person') demonstrates that an entity subject to this title (referred to in this title as a 'covered entity') has a policy or practice that causes a disparate impact on the basis of age and the covered entity fails to demonstrate that the challenged policy or practice is related to and necessary to achieve the nondiscriminatory goals of the program or activity alleged to have been operated in a discriminatory manner; or

''(ii) the aggrieved person demonstrates (consistent with the demonstration required under title VII of the Civil Rights Act of 1964 (42 U.S.C. 2000e et seq.) with respect to an 'alternative employment practice') that a less discriminatory alternative policy or practice exists, and the covered entity refuses to adopt such alternative policy or practice.

''(B)(i) With respect to demonstrating that a particular policy or practice causes a disparate impact as described in subparagraph (A)(i), the aggrieved person shall demonstrate that each particular challenged policy or practice causes a disparate impact, except that if the aggrieved person demonstrates to the court that the elements of a covered entity's decisionmaking process are not capable of separation for analysis, the decisionmaking process may be analyzed as one policy or practice.

''(ii) If the covered entity demonstrates that a specific policy or practice does not cause the disparate impact, the covered entity shall not be required to demonstrate that such policy or practice is necessary to achieve the goals of its program or activity.

''(2) A demonstration that a policy or practice is necessary to achieve the goals of a program or activity may not be used as a defense against a claim of intentional discrimination under this title.

''(3) In this subsection, the term 'demonstrates' means meets the burdens of production and persuasion.

''(c) No person in the United States shall be subjected to discrimination, including retaliation, because such person opposed any policy or practice prohibited by this title, or because such person made a charge, testified, assisted, or participated in any manner in an investigation, proceeding, or hearing under this title.''.

SEC. 103. RIGHTS OF ACTION.

(a) CIVIL RIGHTS ACT OF 1964.—Section 602 of the Civil Rights Act of 1964 (42 U.S.C. 2000d–1) is amended—

(1) by inserting ''(a)'' before ''Each Federal department and agency which is empowered''; and

(2) by adding at the end the following:

''(b) Any person aggrieved by the failure of a covered entity to comply with this title, including any regulation promulgated pursuant to this title, may bring a civil action in any Federal or State court of competent jurisdiction to enforce such person's rights.''.

(b) EDUCATION AMENDMENTS OF 1972.—Section 902 of the Education Amendments of 1972 (20 U.S.C. 1682) is amended—

(1) by inserting ''(a)'' before ''Each Federal department and agency which is empowered''; and

(2) by adding at the end the following:

''(b) Any person aggrieved by the failure of a covered entity to comply with this title, including any regulation promulgated pursuant to this title, may bring a civil action in any Federal or State court of competent jurisdiction to enforce such person's rights.''.

(c) AGE DISCRIMINATION ACT OF 1975.—Section 305(e) of the Age Discrimination Act of 1975 (42 U.S.C. 6104(e)) is amended in the first sentence of paragraph (1), by striking ''this Act'' and inserting ''this title, including a regulation promulgated to carry out this title,''.

SEC. 104. RIGHT OF RECOVERY.

(a) CIVIL RIGHTS ACT OF 1964.—Title VI of the Civil Rights Act of 1964 (42 U.S.C. 2000–d et seq.) is amended by inserting after section 602 the following:

''SEC. 602A. ACTIONS BROUGHT BY AGGRIEVED PERSONS.

''(a) CLAIMS BASED ON PROOF OF INTENTIONAL DISCRIMINATION.—In an action brought by an aggrieved person under this title against a covered entity who has engaged in unlawful intentional discrimination (not a practice that is unlawful because of its disparate impact) prohibited under this title (including its implementing regulations), the aggrieved person may recover equitable and legal relief (including compensatory and punitive damages), attorney's fees (including expert fees), and costs, except that punitive damages are not available against a government, government agency, or political subdivision.

''(b) CLAIMS BASED ON THE DISPARATE IMPACT STANDARD OF PROOF.—In an action brought by an aggrieved person under this title against a covered entity who has engaged in unlawful discrimination based on disparate impact prohibited under this title (including its implementing regulations), the aggrieved person may recover equitable relief, attorney's fees (including expert fees), and costs.''.

(b) EDUCATION AMENDMENTS OF 1972.—Title IX of the Education Amendments of 1972 (20 U.S.C. 1681 et seq.) is amended by inserting after section 902 the following:

''SEC. 902A. ACTIONS BROUGHT BY AGGRIEVED PERSONS.

''(a) CLAIMS BASED ON PROOF OF INTENTIONAL DISCRIMINATION.—In an action brought by an aggrieved person under this title against a covered entity who has engaged in unlawful intentional discrimination (not a practice that is unlawful because of its disparate impact) prohibited under this title (including its implementing regulations), the aggrieved person may recover equitable and legal relief (including compensatory and punitive damages), attorney's fees (including expert fees), and costs, except that punitive damages are not available against a government, government agency, or political subdivision.

''(b) CLAIMS BASED ON THE DISPARATE IMPACT STANDARD OF PROOF.—In an action brought by an aggrieved person under this title against a covered entity who has engaged in unlawful discrimination based on

disparate impact prohibited under this title (including its implementing regulations), the aggrieved person may recover equitable relief, attorney's fees (including expert fees), and costs.''.

(c) AGE DISCRIMINATION ACT OF 1975.—

(1) IN GENERAL.—Section 305 of the Age Discrimination Act of 1975 (42 U.S.C. 6104) is amended by adding at the end the following:

''(g)(1) In an action brought by an aggrieved person under this title against a covered entity who has engaged in unlawful intentional discrimination (not a practice that is unlawful because of its disparate impact) prohibited under this title (including its implementing regulations), the aggrieved person may recover equitable and legal relief (including compensatory and punitive damages), attorney's fees (including expert fees), and costs, except that punitive damages are not available against a government, government agency, or political subdivision.

''(2) In an action brought by an aggrieved person under this title against a covered entity who has engaged in unlawful discrimination based on disparate impact prohibited under this title (including its implementing regulations), the aggrieved person may recover equitable relief, attorney's fees (including expert fees), and costs.''.

(2) CONFORMITY OF ADA WITH TITLE VI AND TITLE IX.—

(A) ELIMINATING WAIVER OF RIGHT TO FEES IF NOT REQUESTED IN COMPLAINT.—Section 305(e)(1) of the Age Discrimination Act of 1975 (42 U.S.C. 6104(e)) is amended—

(i) by striking ''to enjoin a violation'' and inserting ''to redress a violation''; and

(ii) by striking the second sentence and inserting the following: ''The Court shall award the costs of suit, including a reasonable attorney's fee (including expert fees), to the prevailing plaintiff.''.

(B) ELIMINATING UNNECESSARY MANDATES: TO EXHAUST ADMINISTRATIVE REMEDIES; AND TO DELAY SUIT LONGER THAN 180 DAYS TO OBTAIN AGENCY REVIEW.—Section 305(f) of the Age Discrimination Act of 1975 (42 U.S.C. 6104(f)) is amended by striking ''With respect to actions brought for relief based on an alleged violation of the provisions of this title,'' and inserting ''Actions brought for relief based on an alleged violation of the provisions of this title may be initiated in a court of competent jurisdiction, pursuant to section 305(e), or before the relevant Federal department or agency. With respect to such actions brought initially before the relevant Federal department or agency,''.

(C) ELIMINATING DUPLICATIVE ''REASONABLENESS'' REQUIREMENT; CLARIFYING THAT ''REASONABLE FACTORS OTHER THAN AGE'' IS DEFENSE TO A DISPARATE IMPACT CLAIM, NOT AN EXCEPTION TO ADA COVERAGE.—Section 304(b)(1) of the Age Discrimination Act of 1975 (42 U.S.C. 6103(b)(1)) is amended by striking ''involved—'' and all that follows through the period and inserting ''involved such action reasonably takes into account age as a factor necessary to the normal operation or the achievement of any statutory objective of such program or activity.''.

(d) REHABILITATION ACT OF 1973.—Section 504 of the Rehabilitation Act of 1973 (29 U.S.C. 794) is amended by adding at the end the following:

''(e)(1) In an action brought by a person aggrieved by discrimination on the basis of disability (referred to in this section as an 'aggrieved person') under this section against an entity subject to this section (referred to in this section as a 'covered entity') who has engaged in unlawful intentional discrimination (not a practice that is unlawful because of its disparate impact) prohibited under this section (including its implementing regulations), the aggrieved person may recover equitable and legal relief (including compensatory and punitive damages), attorney's fees (including expert fees), and costs, except that punitive damages are not available against a government, government agency, or political subdivision.

''(2) In an action brought by an aggrieved person under this section against a covered entity who has engaged in unlawful discrimination based on disparate impact prohibited under this section (including its implementing regulations), the aggrieved person may recover equitable relief, attorney's fees (including expert fees), and costs.''.

SEC. 105. CONSTRUCTION.

(a) RELIEF.—Nothing in this subtitle, including any amendment made by this subtitle, shall be construed to limit the scope of, or the relief available under, section 504 of the Rehabilitation Act of 1973 (29 U.S.C. 794), the Americans with Disabilities Act of 1990 (42 U.S.C. 12101 et seq.), or any other provision of law.

(b) DEFENDANTS.—Nothing in this subtitle, including any amendment made by this subtitle, shall be construed to limit the scope of the class of persons who may be subjected to civil actions under the covered civil rights provisions.

SEC. 106. EFFECTIVE DATE.

(a) IN GENERAL.—This subtitle, and the amendments made by this subtitle, are retroactive to April 24, 2001, and effective as of that date.

(b) APPLICATION.—This subtitle, and the amendments made by this subtitle, apply to all actions or proceedings pending on or after April 24, 2001, except as to an action against a State on a claim brought under the disparate impact standard, as to which the effective date is the date of enactment of this Act.

Subtitle B—Harassment

SEC. 111. FINDINGS.

Congress finds the following:

(1) As the Supreme Court has held, covered entities are liable for harassment on the basis of sex under their education programs and activities under title IX of the Education Amendments of 1972 (20 U.S.C. 1681 et seq.) (referred to in this subtitle as ''title IX''). Franklin v. Gwinnett County Public Schools, 503 U.S. 60, 75 (1992) (damages remedy available for harassment of student by a teacher coach); Davis v. Monroe County Board of Education, 526 U.S. 629, 633 (1999) (authorizing damages action against school board for student-on-student sexual harassment).

(2) Courts have confirmed that covered entities are liable for harassment on the basis of race, color, or national origin under title VI of the Civil Rights Act of 1964 (42 U.S.C. 2000d et seq.) (referred to in this subtitle as ''title VI''), e.g., Bryant v. Independent School District No. I–38, 334 F.3d 928 (10th Cir. 2003) (liability for student-on-student racial harassment). Moreover, judicial interpretation of the similarly worded Age Discrimination Act of 1975 (42 U.S.C. 6101 et seq.) and section 504 of the Rehabilitation Act of 1973 (29 U.S.C. 794) has tracked that of title VI and title IX.

(3) As these courts have properly recognized, harassment on a prohibited basis under a program or activity, whether perpetrated by employees or agents of the program or activity, by peers of the victim, or by others who conduct harassment under the program or activity, is a form of unlawful and intentional discrimination that inflicts substantial harm on beneficiaries of the program or activity and violates the obligation of a covered entity to maintain a nondiscriminatory environment.

(4) In a 5 to 4 ruling, the Supreme Court held that students subjected to sexual harassment may receive a damages remedy under title IX only when school officials have ''actual notice'' of the harassment and are ''deliberately indifferent'' to it. Gebser v. Lago Vista Independent School District, 524 U.S. 274 (1998). See also Davis v. Monroe County Board of Education, 526 U.S. 629 (1999).

(5) The standard delineated in Gebser and followed in Davis has been applied by lower courts regarding the liability of covered entities for damages for harassment based on race, color, or national origin under title VI. E.g., Bryant v. Independent School District No. I–38, 334 F.3d 928 (10th Cir. 2003). Because of the similarities in the wording and interpretation of the underlying statutes, this standard may be applied to claims for damages brought under the Age Discrimination Act of 1975 (42 U.S.C. 6101 et seq.) and section 504 of the Rehabilitation Act of 1973 (29 U.S.C. 794) as well.

(6) Although they do not affect the relevant standards for individuals to obtain injunctive and equitable relief for harassment on the basis of race, color, sex, national origin, age, or disability under covered programs and activities, Gebser and its progeny severely limit the availability of remedies for such individuals by imposing new, more stringent standards for recovery of damages under title VI and title IX, and potentially under the Age Discrimination Act of 1975 and section 504 of the Rehabilitation Act of 1973. Yet in many cases, damages are the only remedy that would effectively rectify past harassment.

(7) As recognized by the dissenters in Gebser, these limitations on effective relief thwart Congress's underlying purpose to protect students from harassment. By making the ''policy choice'' to ''rank[] protection of the school district's purse above the protection of immature high school students'', the Gebser case ''is not faithful to the intent of the policymaking branch of our Government''. Gebser, 524 U.S. at 306 (Stevens, J., dissenting).

(8) The rulings in Gebser and its progeny create an incentive for covered entities to insulate themselves from knowledge of harassment on the basis of race, color, sex, national origin, age, or disability rather than adopting and enforcing practices that will minimize the danger of such harassment. The rulings thus undermine the purpose of prohibitions on discrimination in the civil rights laws: ''to induce [covered programs or activities] to adopt and enforce practices that will minimize the danger that vulnerable students [or other beneficiaries] will be exposed to such odious behavior''. Gebser, 524 U.S. at 300 (Stevens, J., dissenting).

(9) The Gebser ruling contravened the interpretations of title VI and title IX by the Department of Education, which interpretations recognized liability for damages for harassment based on race, color, sex, or national origin based on agency principles. Sexual Harassment Guidance: Harassment of Students by School Employees, Other Students, or Third Parties, 62 Fed. Reg. 12034 (March 13, 1997); Racial Incidents and Harassment Against Students at Educational Institutions: Investigative Guidance, 59 Fed. Reg. 11448 (March 10, 1994).

(10) Legislative action is necessary and appropriate to reverse Gebser and its progeny and restore the availability of a full range of remedies for harassment based on race, color, sex, national origin, age, or disability. The Gebser majority itself invited Congress to ''speak directly on the subject'' of damages liability to provide additional guidance to the courts. 524 U.S. at 292.

(11) Restoring the availability of a full range of remedies for harassment will—

(A) ensure that students and other beneficiaries of federally funded programs and activities have protection from harassment on the basis of race, color, sex, national origin, age, or disability that is comparable in strength and effectiveness to that available to employees under title VII of the Civil Rights Act of 1964 (42 U.S.C. 2000e et seq.), the Age Discrimination in Employment Act of 1967 (29 U.S.C. 621 et seq.), and title I of the Americans with Disabilities Act of 1990 (42 U.S.C. 12111 et seq.);

(B) encourage covered entities to adopt and enforce meaningful policies and procedures to prevent and remedy harassment;

(C) deter incidents of harassment; and

(D) provide appropriate remedies for discrimination.

(12) Congress has the same affirmative powers to enact legislation restoring the availability of a full range of remedies for harassment as it did to enact the underlying statutory prohibitions on harassment, including powers under section 5 of the 14th amendment and section 8 of article I of the Constitution.

(13) The right to maintain a private right of action under a provision added to a statute under this subtitle will be effectuated by a waiver of sovereign immunity in the same manner as sovereign immunity is waived under the remaining provisions of that statute.

SEC. 112. RIGHT OF RECOVERY.

(a) CIVIL RIGHTS ACT OF 1964.—Section 602A of the Civil Rights Act of 1964, as added by section 104, is amended by adding at the end the following:

''(c) CLAIMS BASED ON HARASSMENT.—

''(1) RIGHT OF RECOVERY.—In an action brought against a covered entity by (including on behalf of) an aggrieved person who has been subjected to unlawful harassment under a program or activity, the aggrieved person may recover equitable and legal relief (including compensatory and punitive damages subject to the provisions of paragraph (2)), attorney's fees (including expert fees), and costs.

''(2) AVAILABILITY OF DAMAGES.—

''(A) TANGIBLE ACTION BY AGENT OR EMPLOYEE.—If an agent or employee of a covered entity engages in unlawful harassment under a program or activity that results in a tangible action to the aggrieved person, damages shall be available against the covered entity.

''(B) NO TANGIBLE ACTION BY AGENT OR EMPLOYEE.—If an agent or employee of a covered entity engages in unlawful harassment under a program or activity that results in no tangible action to the aggrieved person, no damages shall be available against the covered entity if it can demonstrate that—

''(i) it exercised reasonable care to prevent and correct promptly any harassment based on race, color, or national origin; and

''(ii) the aggrieved person unreasonably failed to take advantage of preventive or corrective opportunities offered by the covered entity that—

''(I) would likely have provided redress and avoided the harm described by the aggrieved person; and

''(II) would not have exposed the aggrieved person to undue risk, effort, or expense.

''(C) HARASSMENT BY THIRD PARTY.—If a person who is not an agent or employee of a covered entity subjects an aggrieved person to unlawful harassment under a program or activity, and the covered entity involved knew or should have known of the harassment, no damages shall be available against the covered entity if it can demonstrate that it exercised reasonable care to prevent and correct promptly any harassment based on race, color, or national origin.

''(D) DEMONSTRATION.—For purposes of subparagraphs (B) and (C), a showing that the covered entity has exercised reasonable care to prevent and correct promptly any harassment based on race, color, or national origin includes a demonstration by the covered entity that it has—

''(i) established, adequately publicized, and enforced an effective, comprehensive, harassment prevention policy and complaint procedure that is likely to provide redress and avoid harm without exposing the person subjected to the harassment to undue risk, effort, or expense;

''(ii) undertaken prompt, thorough, and impartial investigations pursuant to its complaint procedure; and

''(iii) taken immediate and appropriate corrective action designed to stop harassment that has occurred, correct its effects on the aggrieved person and ensure that the harassment does not recur.

''(E) PUNITIVE DAMAGES.—Punitive damages shall not be available under this subsection against a government, government agency, or political subdivision.

''(3) DEFINITIONS.—As used in this subsection:

''(A) DEMONSTRATES.—The term 'demonstrates' means meets the burdens of production and persuasion.

''(B) TANGIBLE ACTION.—The term 'tangible action' means—

''(i) a significant adverse change in an individual's status caused by an agent or employee of a covered entity with regard to the individual's participation in, access to, or enjoyment of, the benefits of a program or activity; or

''(ii) an explicit or implicit condition by an agent or employee of a covered entity on an individual's participation in, access to, or enjoyment of, the benefits of a program or activity based on the individual's submission to the harassment.

''(C) UNLAWFUL HARASSMENT.—The term 'unlawful harassment' means harassment that is unlawful under this title.''.

(b) EDUCATION AMENDMENTS OF 1972.—Section 902A of the Civil Rights Act of 1964, as added by section 104, is amended by adding at the end the following:

''(c) CLAIMS BASED ON HARASSMENT.—

''(1) RIGHT OF RECOVERY.—In an action brought against a covered entity by (including on behalf of) aggrieved person who has been subjected to unlawful harassment under a program or activity, the aggrieved person may recover equitable and legal relief (including compensatory and punitive damages subject to the provisions of paragraph (2)), attorney's fees (including expert fees), and costs.

''(2) AVAILABILITY OF DAMAGES.—

''(A) TANGIBLE ACTION BY AGENT OR EMPLOYEE.—If an agent or employee of a covered entity engages in unlawful harassment under a program or activity that results in a tangible action to the aggrieved person, damages shall be available against the covered entity.

''(B) NO TANGIBLE ACTION BY AGENT OR EMPLOYEE.—If an agent or employee of a covered entity engages in unlawful harassment under a program or activity that results in no tangible action to the aggrieved person, no damages shall be available against the covered entity if it can demonstrate that—

''(i) it exercised reasonable care to prevent and correct promptly any harassment based on sex; and

''(ii) the aggrieved person unreasonably failed to take advantage of preventive or corrective opportunities offered by the covered entity that—

''(I) would likely have provided redress and avoided the harm described by the aggrieved person; and

''(II) would not have exposed the aggrieved person to undue risk, effort, or expense.

''(C) HARASSMENT BY THIRD PARTY.—If a person who is not an agent or employee of a covered entity subjects an aggrieved person to unlawful harassment under a program or activity, and the covered entity knew or should have known of the harassment, no damages shall be available against the covered entity if it can demonstrate that it exercised reasonable care to prevent and correct promptly any harassment based on sex.

''(D) DEMONSTRATION.—For purposes of subparagraphs (B) and (C), a showing that the covered entity has exercised reasonable care to prevent and correct promptly any harassment based on sex includes a demonstration by the covered entity that it has—

''(i) established, adequately publicized, and enforced an effective, comprehensive, harassment prevention policy and complaint procedure that is likely to provide redress and avoid harm without exposing the person subjected to the harassment to undue risk, effort, or expense;

''(ii) undertaken prompt, thorough, and impartial investigations pursuant to its complaint procedure; and

''(iii) taken immediate and appropriate corrective action designed to stop harassment that has occurred, correct its effects on the aggrieved person, and ensure that the harassment does not recur.

''(E) PUNITIVE DAMAGES.—Punitive damages shall not be available under this subsection against a government, government agency, or political subdivision.

''(3) DEFINITIONS.—As used in this subsection:

''(A) DEMONSTRATES.—The term 'demonstrates' means meets the burdens of production and persuasion.

''(B) TANGIBLE ACTION.—The term 'tangible action' means—

''(i) a significant adverse change in an individual's status caused by an agent or employee of a covered entity with regard to the individual's participation in, access to, or enjoyment of, the benefits of a program or activity; or

''(ii) an explicit or implicit condition by an agent or employee of a covered entity on an individual's participation in, access to, or enjoyment of, the benefits of a program or activity based on the individual's submission to the harassment.

''(C) UNLAWFUL HARASSMENT.—The term 'unlawful harassment' means harassment that is unlawful under this title.''.

(c) AGE DISCRIMINATION ACT OF 1975.—Section 305(g) of the Age Discrimination Act of 1975, as added by section 104, is amended by adding at the end the following:

''(3)(A) If an action brought against a covered entity by (including on behalf of) an aggrieved person who has been subjected to unlawful harassment under a program or activity, the aggrieved person may recover equitable and legal relief (including compensatory and punitive damages subject to the provisions of subparagraph (B)), attorney's fees (including expert fees), and costs.

''(B)(i) If an agent or employee of a covered entity engages in unlawful harassment under a program or activity that results in a tangible action to the aggrieved person, damages shall be available against the covered entity.

''(ii) If an agent or employee of a covered entity engages in unlawful harassment under a program or activity that results in no tangible action to the aggrieved person, no damages shall be available against the covered entity if it can demonstrate that—

''(I) it exercised reasonable care to prevent and correct promptly any harassment based on age; and

''(II) the aggrieved person unreasonably failed to take advantage of preventive or corrective opportunities offered by the covered entity that—

''(aa) would likely have provided redress and avoided the harm described by the aggrieved person; and

''(bb) would not have exposed the aggrieved person to undue risk, effort, or expense.

''(iii) If a person who is not an agent or employee of a covered entity subjects an aggrieved person to unlawful harassment under a program or activity, and the covered entity knew or should have known of the harassment, no damages shall be available against the covered entity if it can demonstrate that it exercised reasonable care to prevent and correct promptly any harassment based on age.

''(iv) For purposes of clauses (ii) and (iii), a showing that the covered entity has exercised reasonable care to prevent and correct promptly any harassment based on age includes a demonstration by the covered entity that it has—

''(I) established, adequately publicized, and enforced an effective, comprehensive, harassment prevention policy and complaint procedure that is likely to provide redress and avoid harm without exposing the person subjected to the harassment to undue risk, effort, or expense;

''(II) undertaken prompt, thorough, and impartial investigations pursuant to its complaint procedure; and

''(III) taken immediate and appropriate corrective action designed to stop harassment that has occurred, correct its effects on the aggrieved person, and ensure that the harassment does not recur.

''(v) Punitive damages shall not be available under this paragraph against a government, government agency, or political subdivision.

''(C) As used in this paragraph:

''(i) The term 'demonstrates' means meets the burdens of production and persuasion.

''(ii) The term 'tangible action' means—

''(I) a significant adverse change in an individual's status caused by an agent or employee of a covered entity with regard to the individual's participation in, access to, or enjoyment of, the benefits of a program or activity; or

''(II) an explicit or implicit condition by an agent or employee of a covered entity on an individual's participation in, access to, or enjoyment of, the benefits of a program or activity based on the individual's submission to the harassment.

''(iii) The term 'unlawful harassment' means harassment that is unlawful under this title.''.

(d) REHABILITATION ACT OF 1973.—Section 504(e) of the Rehabilitation Act of 1973, as added by section 104, is amended by adding at the end the following:

''(3)(A) In an action brought against a covered entity by (including on behalf of) an aggrieved person who has been subjected to unlawful harassment under a program or activity, the aggrieved person may recover equitable and legal relief (including compensatory and punitive damages subject to the provisions of subparagraph (B)), attorney's fees (including expert fees), and costs.

''(B)(i) If an agent or employee of a covered entity engages in unlawful harassment under a program or activity that results in a tangible action to the aggrieved person, damages shall be available against the covered entity.

''(ii) If an agent or employee of a covered entity engages in unlawful harassment under a program or activity that results in no tangible action to the aggrieved person, no damages shall be available against the covered entity if it can demonstrate that—

''(I) it exercised reasonable care to prevent and correct promptly any harassment based on disability; and

''(II) the aggrieved person unreasonably failed to take advantage of preventive or corrective opportunities offered by the covered entity that—

''(aa) would likely have provided redress and avoided the harm described by the aggrieved person; and

''(bb) would not have exposed the aggrieved person to undue risk, effort, or expense.

''(iii) If a person who is not an agent or employee of a covered entity subjects an aggrieved person to unlawful harassment under a program or activity, and the covered entity knew or should have known of the harassment, no damages shall be available against the covered entity if it can demonstrate that it exercised reasonable care to prevent and correct promptly any harassment based on disability.

''(iv) For purposes of clauses (ii) and (iii), a showing that the covered entity has exercised reasonable care to prevent and correct promptly any harassment based on disability includes a demonstration by the covered entity that it has—

''(I) established, adequately publicized, and enforced an effective, comprehensive, harassment prevention policy and complaint procedure that is likely to provide redress and avoid harm without exposing the person subjected to the harassment to undue risk, effort, or expense;

''(II) undertaken prompt, thorough, and impartial investigations pursuant to its complaint procedure; and

''(III) taken immediate and appropriate corrective action designed to stop harassment that has occurred, correct its effects on the aggrieved person, and ensure that the harassment does not recur.

''(v) Punitive damages shall not be available under this paragraph against a government, government agency, or political subdivision.

''(C) As used in this paragraph:

''(i) The term 'demonstrates' means meets the burdens of production and persuasion.

''(ii) The term 'tangible action' means—

''(I) a significant adverse change in an individual's status caused by an agent or employee of a covered entity with regard to the individual's participation in, access to, or enjoyment of, the benefits of a program or activity; or

''(II) an explicit or implicit condition by an agent or employee of a covered entity on an individual's participation in, access to, or enjoyment of, the benefits of a program or activity based on the individual's submission to the harassment.

''(iii) The term 'unlawful harassment' means harassment that is unlawful under this section.''.

SEC. 113. CONSTRUCTION.

Nothing in this subtitle, including any amendment made by this subtitle, shall be construed to limit the scope of the class of persons who may be subjected to civil actions under the covered civil rights provisions.

SEC. 114. EFFECTIVE DATE.

(a) IN GENERAL.—This subtitle, and the amendments made by this subtitle, are retroactive to June 22, 1998, and effective as of that date.

(b) APPLICATION.—This subtitle, and the amendments made by this subtitle, apply to all actions or proceedings pending on or after June 22, 1998, except as to an action against a State, as to which the effective date is the date of enactment of this Act.

TITLE II—UNIFORMED SERVICES EMPLOYMENT AND REEMPLOYMENT RIGHTS ACT OF 1994 AMENDMENT

SEC. 201. AMENDMENT TO THE UNIFORMED SERVICES EMPLOYMENT AND REEMPLOYMENT RIGHTS ACT OF 1994.

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

(1) The Federal Government has an important interest in attracting and training a military to provide for the National defense. The Constitution grants Congress the power to raise and support an army for purposes of the common defense. The Nation's military readiness requires that all members of the Armed Forces, including those employed in State programs and activities, be able to serve without jeopardizing their civilian employment opportunities.

(2) The Uniformed Services Employment and Reemployment Rights Act of 1994, commonly referred to as ''USERRA'' and codified as chapter 43 of title 38, United States Code, is intended to safeguard the reemployment rights of members of the uniformed services (as that term is defined in section 4303(16) of title 38, United States Code) and to prevent discrimination against any person who is a member of, applies to be a member of, performs, has performed, applies to perform, or has an obligation to perform service in a uniformed service. Effective enforcement of the Act depends on the ability of private individuals to enforce its provisions in court.

(3) In Seminole Tribe of Florida v. Florida, 517 U.S. 44 (1996), the Supreme Court held that congressional legislation enacted pursuant to the commerce clause of Article I, section 8, of the Constitution cannot abrogate the immunity of States under the 11th amendment to the Constitution. Some courts have interpreted Seminole Tribe of Florida v. Florida as a basis for denying relief to persons affected by a State violation of USERRA. In addition, in Alden v. Maine 527 U.S. 706, 712 (1999), the Supreme Court held that this immunity also prohibits the Federal Government from subjecting ''nonconsenting states to private suits for damages in state courts.'' As a result, although USERRA specifically provides that a person may commence an action for relief against a State for its violation of that Act, persons harmed by State violations of that Act lack important remedies to vindicate the rights and benefits that are available to all other persons covered by that Act. Unless a State chooses to waive sovereign immunity, or the Attorney General brings an action on their behalf, persons affected by State violations of USERRA may have no adequate Federal remedy for such violations.

(4) A failure to provide a private right of action by persons affected by State violations of USERRA would leave vindication of their rights and benefits under that Act solely to Federal agencies, which may fail to take necessary and appropriate action because of administrative overburden or other reasons. Action by Congress to specify such a private right of action ensures that persons affected by State violations of USERRA have a remedy if they are denied their rights and benefits under that Act.

(b) CLARIFICATION OF RIGHT OF ACTION UNDER USERRA.—Section 4323 of title 38, United States Code, is amended—

(1) in subsection (b), by striking paragraph (2) and inserting the following new paragraph (2):

''(2) In the case of an action against a State (as an employer) by a person, the action may be brought in a district court of the United States or State court of competent jurisdiction.'';

(2) by redesignating subsection (j) as subsection (k); and

(3) by inserting after subsection (i) the following new subsection (j):

''(j)(1)(A) A State's receipt or use of Federal financial assistance for any program or activity of a State shall constitute a waiver of sovereign immunity, under the 11th amendment to the Constitution or otherwise, to a suit brought by an employee of that program or activity under this chapter for the rights or benefits authorized the employee by this chapter.

''(B) In this paragraph, the term 'program or activity' has the meaning given the term in section 309 of the Age Discrimination Act of 1975 (42 U.S.C. 6107).

''(2) An official of a State may be sued in the official capacity of the official by any person covered by paragraph (1) who seeks injunctive relief against a State (as an employer) under subsection (e). In such a suit the court may award to the prevailing party those costs authorized by section 722 of the Revised Statutes (42 U.S.C. 1988).''.

TITLE III—AIR CARRIER ACCESS ACT OF 1986 AMENDMENT

SEC. 301. FINDINGS.

Congress finds the following:

(1) In Love v. Delta Air Lines, 310 F. 3d 1347 (11th Cir. 2002), the United States Court of Appeals for the Eleventh Circuit held that when Congress passed the Air Carrier Access Act of 1986, adding a provision now codified at section 41705 of title 49, United States Code (referred to in this title as the ''ACAA''), Congress did not intend to create a private right of action with which individuals with disabilities could sue air carriers in Federal court for discrimination on the basis of disability. The court recognized that other courts of appeals have held that the ACAA created a private right of action. Nevertheless, the court, relying on the Supreme Court's decision in Alexander v. Sandoval, 532 U.S. 275 (2001), concluded that the ACAA did not create a private right of action.

(2) The absence of a private right of action leaves enforcement of the ACAA solely in the hands of the Department of Transportation, which is overburdened and lacks the resources to investigate, prosecute violators for, and remediate all of the violations of the rights of travelers who are individuals with disabilities. Nor can the Department of Transportation bring an action that will redress the injury of an individual resulting from such a violation. The Department of Transportation can take action that fines an air carrier or requires the air carrier to obey the law in the future, but the Department is not authorized to issue orders that redress the injuries sustained by individual air passengers. Action by Congress is necessary to ensure that individuals with disabilities will have adequate remedies available when air carriers violate the ACAA (including its regulations), and only courts may provide this redress to individuals.

(3) When an air carrier violates the ACAA and discriminates against an individual with a disability, frequently the only way to compensate that individual for the harm the individual has suffered is through an award of money damages. For example, violations of the ACAA may result in travelers who are individuals with disabilities missing flights for business appointments or important personal events, or in such travelers suffering humiliating treatment at the hands of air carriers. Those harms cannot be remedied solely through injunctive relief.

(4) Unlike other civil rights statutes, the ACAA does not contain a fee-shifting provision under which a prevailing plaintiff can be awarded attorney's fees. Action by Congress is necessary to correct this anomaly. The availability of attorney's fees is essential to ensuring that persons who have been aggrieved by violations of the ACAA can enforce their rights. The inclusion of a fee-shifting provision in the ACAA will permit individuals to serve as private attorneys general, a necessary role on which enforcement of civil rights statutes depends.

SEC. 302. CIVIL ACTION.

Section 41705 of title 49, United States Code, is amended by adding at the end the following:

''(d) CIVIL ACTION.—(1) Any person aggrieved by an air carrier's violation of subsection (a) (including any regulation implementing such subsection) may bring a civil action in the district court of the United States in the district in which the aggrieved person resides, in the district containing the air carrier's principal place of business, or in the district in which the violation took place. Any such action must be commenced within 2 years after the date of the violation.

''(2) In any civil action brought by an aggrieved person pursuant to paragraph (1), the plaintiff may obtain both equitable and legal relief, including compensatory and punitive damages. The court in such action shall, in addition to such relief awarded to a prevailing plaintiff, award reasonable attorney's fees, reasonable expert fees, and costs of the action to the plaintiff.''.

TITLE IV—AGE DISCRIMINATION IN EMPLOYMENT ACT AMENDMENTS

SEC. 401. SHORT TITLE.

This title may be cited as the ''Older Workers' Rights Restoration Act of 2004''.

SEC. 402. FINDINGS.

Congress finds the following:

(1) Since 1974, the Age Discrimination in Employment Act of 1967 (29 U.S.C. 621 et seq.) (referred to in this section as the 'ADEA') has prohibited States from discriminating in employment on the basis of age. In EEOC v. Wyoming, 460 U.S. 226 (1983), the Supreme Court upheld Congress's constitutional authority to prohibit States from discriminating in employment on the basis of age. The prohibitions of the ADEA remain in effect and continue to apply to the States, as the prohibitions have for more than 25 years.

(2) Age discrimination in employment remains a serious problem both nationally and among State agencies, and has invidious effects on its victims, the labor force, and the economy as a whole. For example, age discrimination in employment—

(A) increases the risk of unemployment among older workers, who will as a result be more likely to be dependent on government resources;

(B) prevents the best use of available labor resources;

(C) adversely effects the morale and productivity of older workers; and

(D) perpetuates unwarranted stereotypes about the abilities of older workers.

(3) Private civil suits by the victims of employment discrimination have been a crucial tool for enforcement of the ADEA since the enactment of that Act. In Kimel v. Florida Board of Regents, 528 U.S. 62 (2000), however, the Supreme Court held that Congress had not abrogated State sovereign immunity to suits by individuals under the ADEA. The Federal Government has an important interest in ensuring that Federal financial assistance is not used to subsidize or facilitate violations of the ADEA. Private civil suits are a critical tool for advancing that interest.

(4) As a result of the Kimel decision, although age-based discrimination by State employers remains unlawful, the victims of such discrimination lack important remedies for vindication of their rights that are available to all other employees covered under that Act, including employees in the private sector, local government, and the Federal Government. Unless a State chooses to waive sovereign immunity, or the Equal Employment Opportunity Commission brings an action on their behalf, State employees victimized by violations of the ADEA have no adequate Federal remedy for violations of that Act. In the absence of the deterrent effect that such remedies provide, there is a greater likelihood that entities carrying out programs and activities receiving Federal financial assistance will use that assistance to violate that Act, or that the assistance will otherwise subsidize or facilitate violations of that Act.

(5) Federal law has long treated nondiscrimination obligations as a core component of programs or activities that, in whole or part, receive Federal financial assistance. That assistance should not be used, directly or indirectly, to subsidize invidious discrimination. Assuring nondiscrimination in employment is a crucial aspect of assuring nondiscrimination in those programs and activities.

(6) Discrimination on the basis of age in programs or activities receiving Federal financial assistance is, in contexts other than employment, forbidden by the Age Discrimination Act of 1975 (42 U.S.C. 6101 et seq.). Congress determined that it was not necessary for the Age Discrimination Act of 1975 to apply to employment discrimination because the ADEA already forbade discrimination in employment by, and authorized suits against, State agencies and other entities that receive Federal financial assistance. In section 1003 of the Rehabilitation Act Amendments of 1986 (42 U.S.C. 2000d–7), Congress required all State entities subject to the Age Discrimination Act of 1975 to waive any immunity from suit for discrimination claims arising under the Age Discrimination Act of 1975. The earlier limitation in the Age Discrimination Act of 1975, originally intended only to avoid duplicative coverage and remedies, has in the wake of the Kimel decision become a serious loophole leaving millions of State employees without an important Federal remedy for age discrimination, resulting in the use of Federal financial assistance to subsidize or facilitate violations of the ADEA.

(7) The Supreme Court has upheld Congress's authority to condition receipt of Federal financial assistance on acceptance by the States or other covered entities of conditions regarding or related to the use of that assistance, as in Cannon v. University of Chicago, 441 U.S. 677 (1979). The Court has further recognized that Congress may require a State, as a condition of receipt of Federal financial assistance, to waive the State's sovereign immunity to suits for a violation of Federal law, as in College Savings Bank v. Florida Prepaid Postsecondary Education Expense Board, 527 U.S. 666 (1999). In the wake of the Kimel decision, in order to assure compliance with, and to provide effective remedies for violations of, the ADEA in State programs or activities receiving or using Federal financial assistance, and in order to ensure that Federal financial assistance does not subsidize or facilitate violations of the ADEA, it is necessary to require such a waiver as a condition of receipt or use of that assistance.

(8) A State's receipt or use of Federal financial assistance in any program or activity of a State will constitute a limited waiver of sovereign immunity under section 7(g) of the ADEA (as added by section 404). The waiver will not eliminate a State's immunity with respect to programs or activities that do not receive or use Federal financial assistance. The State will waive sovereign immunity only with respect to suits under the ADEA brought by employees within the programs or activities that receive or use

that assistance. With regard to those programs and activities that are covered by the waiver, the State employees will be accorded only the same remedies that are accorded to other covered employees under the ADEA.

(9) The Supreme Court has repeatedly held that State sovereign immunity does not bar suits for prospective injunctive relief brought against State officials, as in Ex parte Young (209 U.S. 123 (1908)). Clarification of the language of the ADEA will confirm that that Act authorizes such suits. The injunctive relief available in such suits will continue to be no broader than the injunctive relief that was available under that Act before the Kimel decision, and that is available to all other employees under that Act.

(10) In Griggs v. Duke Power Co., 401 U.S. 424, 431 (1971), the Supreme Court recognized that title VII of the Civil Rights Act of 1964 (42 U.S.C. 2000e et seq.) ''proscribes not only overt discrimination [in employment] but also [employment] practices that are fair in form, but discriminatory in operation. . . .'' In doing so, the Court relied on section 703(a)(2) of title VII of the Civil Rights Act of 1964 (42 U.S.C. 2000e–2(a)(2)), which contains language identical to section 4(a)(2) of the ADEA, except that the latter substitutes the word age for the grounds of prohibited discrimination specified by title VII of the Civil Rights Act of 1964: ''race, color, religion, sex, or national origin.'' The Court has confirmed that this and other related statutory language, identical to both title VII of the Civil Rights Act of 1964 and the ADEA, supports application of the disparate impact doctrine. Connecticut v. Teal, 457 U.S. 440 (1982); General Electric Co. v. Gilbert, 429 U.S. 125 (1976).

(11) Other indicia of Congress's intent to permit the disparate impact method of proving violations of the ADEA are legion, and include numerous other textual parallels between the ADEA and title VII of the Civil Rights Act of 1964, such as in the two laws' substantive prohibitions. Lorillard v. Pons, 434 U.S. 575, 584 (1978) (the ADEA's substantive prohibitions ''were derived in haec verba from Title VII''). Moreover, the ADEA and title VII of the Civil Rights Act of 1964 share ''a common purpose: 'the elimination of discrimination in the workplace,' ''. McKennon v. Nashville Banner Pub. Co., 513 U.S. 352, 358 (1995) (quoting Oscar Mayer & Co. v. Evans, 441 U.S. 750, 756 (1979)). Interpreting title VII of the Civil Rights Act of 1964 in a consistent manner is particularly appropriate when ''the two provisions share a common raison d'etre.''. Northcross v. Board of Educ. of Memphis City Schools, 412 U.S. 427, 428 (1973).

(12) The ADEA's legislative history confirms Congress's intent to redress all ''arbitrary'' age discrimination in the workplace, including arbitrary facially neutral policies and practices falling more harshly on older workers. Such policies continue to be based on the kind of ''subconscious stereotypes and prejudices'' which cannot be ''adequately policed through disparate treatment analysis,'' and thus, require application of the disparate impact theory of proof. Watson v. Fort Worth Bank & Trust, 487 U.S. 977, 990 (1988). As the Supreme Court has noted, these prejudices are ''the essence of age discrimination.''. Hazen Paper Co. v. Biggins, 507 U.S. 604, 610, n.15 (1993).

(13) In 1991, Congress reaffirmed that title VII of the Civil Rights Act of 1964 permits victims of employment bias to state a cause of action for disparate impact discrimination when it added a provision to title VII of the Civil Rights Act of 1964 to clarify the burden of proof in disparate impact cases in section 703(k) of the Civil Rights Act of 1964 (42 U.S.C. 2000e–2(k)).

(14) Subsequently, several lower courts and Federal Courts of Appeal have mistakenly relied on language in the Supreme Court's opinion in Hazen Paper Co. v. Biggins, 507 U.S. 604 (1993), to suggest that the disparate impact method of proof does not apply to claims under the ADEA. Mullin v. Raytheon Co., 164 F.3d 696, 700–01 (1st Cir. 1999); EEOC v. Francis W. Parker School, 41 F.3d 1073, 1076–77 (7th Cir. 1994); Ellis v. United Airlines, Inc., 73 F.3d 999, 1006–07 (10th Cir. 1996); DiBiase v. Smithkline Beecham Corp., 48 F.3d 719, 732 (3d Cir. 1995); Lyon v. Ohio Educ. Ass'n and Prof'l Staff Union, 53 F.3d 135, 139 n.5 (6th Cir. 1995). Congress did not intend the ADEA to be interpreted to provide older workers less protections against discrimination than those protected under title VII of the Civil Rights Act of 1964. As a result, it is necessary to clarify the burden of proof in a disparate impact case under the ADEA, and thereby reaffirm that victims of age discrimination in employment discrimination may state a cause of action based on the disparate impact method of proving discrimination in appropriate circumstances.

SEC. 403. PURPOSES.

The purposes of this title are—

(1) to provide to State employees in programs or activities that receive or use Federal financial assistance the same rights and remedies for practices violating the Age Discrimination in Employment Act of 1967 (29 U.S.C. 621 et seq.) as are available to other employees under that Act, and that were available to State employees prior to the Supreme Court's decision in Kimel v. Florida Board of Regents, 528 U.S. 62 (2000);

(2) to provide that the receipt or use of Federal financial assistance for a program or activity constitutes a State waiver of sovereign immunity from suits by employees within that program or activity for violations of the Age Discrimination in Employment Act of 1967;

(3) to affirm that suits for injunctive relief are available against State officials in their official capacities for violations of the Age Discrimination in Employment Act of 1967; and

(4) to reaffirm the applicability of the disparate impact standard of proof to claims under the Age Discrimination in Employment Act of 1967.

SEC. 404. REMEDIES FOR STATE EMPLOYEES.

Section 7 of the Age Discrimination in Employment Act of 1967 (29 U.S.C. 626) is amended by adding at the end the following:

''(g)(1)(A) A State's receipt or use of Federal financial assistance for any program or activity of a State shall constitute a waiver of sovereign immunity, under the 11th amendment to the Constitution or otherwise, to a suit brought by an employee of that program or activity under this Act for equitable, legal, or other relief authorized under this Act.

''(B) In this paragraph, the term 'program or activity' has the meaning given the term in section 309 of the Age Discrimination Act of 1975 (42 U.S.C. 6107).

''(2) An official of a State may be sued in the official capacity of the official by any employee who has complied with the procedures of subsections (d) and (e), for injunctive relief that is authorized under this Act. In such a suit the court may award to the prevailing party those costs authorized by section 722 of the Revised Statutes (42 U.S.C. 1988).''.

SEC. 405. DISPARATE IMPACT CLAIMS.

Section 4 of the Age Discrimination in Employment Act of 1967 (29 U.S.C. 623) is amended by adding at the end the following:

''(n)(1) Discrimination based on disparate impact is established under this title only if—

''(A) an aggrieved party demonstrates that an employer, employment agency, or labor organization has a policy or practice that causes a disparate impact on the basis of age and the employer, employment agency, or labor organization fails to demonstrate that the challenged policy or practice is based on reasonable factors that are job-related and consistent with business necessity other than age; or

''(B) the aggrieved party demonstrates (consistent with the demonstration standard under title VII of the Civil Rights Act of 1964 (42 U.S.C. 2000e et seq.) with respect to an 'alternative employment practice') that a less discriminatory alternative policy or practice exists, and the employer, employment agency, or labor organization refuses to adopt such alternative policy or practice.

''(2)(A) With respect to demonstrating that a particular policy or practice causes a disparate impact as described in paragraph (1)(A), the aggrieved party shall demonstrate that each particular challenged policy or practice causes a disparate impact, except that if the aggrieved party demonstrates to the court that the elements of an employer, employment agency, or labor organization's decisionmaking process are not capable of separation for analysis, the decisionmaking process may be analyzed as one policy or practice.

''(B) If the employer, employment agency, or labor organization demonstrates that a specific policy or practice does not cause the disparate impact, the employer, employment agency, or labor organization shall not be required to demonstrate that such policy or practice is necessary to the operation of its business.

''(3) A demonstration that a policy or practice is necessary to the operation of the employer, employment agency, or labor organization's business may not be used as a defense against a claim of intentional discrimination under this title.

''(4) In this subsection, the term 'demonstrates' means meets the burdens of production and persuasion.''.

SEC. 406. EFFECTIVE DATE.

(a) WAIVER OF SOVEREIGN IMMUNITY.—With respect to a particular program or activity, section 7(g)(1) of the Age Discrimination in Employment Act of 1967 (29 U.S.C. 626(g)(1)) applies to conduct occurring on or after the day, after the date of enactment of this title, on which a State first receives or uses Federal financial assistance for that program or activity.

(b) SUITS AGAINST OFFICIALS.—Section 7(g)(2) of the Age Discrimination in Employment Act of 1967 (29 U.S.C. 626(g)(2)) applies to any suit pending on or after the date of enactment of this title.

TITLE V—CIVIL RIGHTS REMEDIES AND RELIEF

Subtitle A—Prevailing Party

SEC. 501. SHORT TITLE.

This subtitle may be cited as the ''Settlement Encouragement and Fairness Act''.

SEC. 502. DEFINITION OF PREVAILING PARTY.

(a) IN GENERAL.—Chapter 1 of title 1, United States Code, is amended by adding at the end the following:

''§ 9. Definition of 'prevailing party'

''(a) In determining the meaning of any Act of Congress, or of any ruling, regulation, or interpretation of the various administrative bureaus and agencies of the United States, or of any judicial or administrative rule, which provides for the recovery of attorney's fees, the term 'prevailing party' shall include, in addition to a party who substantially prevails through a judicial or administrative judgment or order, or an enforceable written agreement, a party whose

pursuit of a nonfrivolous claim or defense was a catalyst for a voluntary or unilateral change in position by the opposing party that provides any significant part of the relief sought.

''(b)(1) If an Act, ruling, regulation, interpretation, or rule described in subsection (a) requires a defendant, but not a plaintiff, to satisfy certain different or additional criteria to qualify for the recovery of attorney's fees, subsection (a) shall not affect the requirement that such defendant satisfy such criteria.

''(2) If an Act, ruling, regulation, interpretation, or rule described in subsection (a) requires a party to satisfy certain criteria, unrelated to whether or not such party has prevailed, to qualify for the recovery of attorney's fees, subsection (a) shall not affect the requirement that such party satisfy such criteria.''.

(b) CLERICAL AMENDMENT.—The table of sections at the beginning of chapter 1 of title 1, United States Code, is amended by adding at the end the following new item:

''9. Definition of 'prevailing party'.''.

(c) APPLICATION.—Section 9 of title 1, United States Code, as added by this Act, shall apply to any case pending or filed on or after the date of enactment of this subtitle.

Subtitle B—Arbitration

SEC. 511. SHORT TITLE.

This subtitle may be cited as the ''Preservation of Civil Rights Protections Act of 2004''.

SEC. 512. AMENDMENT TO FEDERAL ARBITRATION ACT.

Section 1 of title 9, United States Code, is amended by striking ''of seamen'' and all that follows through ''commerce''.

SEC. 513. UNENFORCEABILITY OF ARBITRATION CLAUSES IN EMPLOYMENT CONTRACTS.

(a) PROTECTION OF EMPLOYEE RIGHTS.—Notwithstanding any other provision of law, any clause of any agreement between an employer and an employee that requires arbitration of a dispute arising under the Constitution or laws of the United States shall not be enforceable.

(b) EXCEPTIONS.—

(1) WAIVER OR CONSENT AFTER DISPUTE ARISES.—Subsection (a) shall not apply with respect to any dispute if, after such dispute arises, the parties involved knowingly and voluntarily consent to submit such dispute to arbitration.

(2) COLLECTIVE BARGAINING AGREEMENTS.—Subsection (a) shall not preclude an employee or union from enforcing any of the rights or terms of a valid collective bargaining agreement.

SEC. 514. APPLICATION OF AMENDMENTS.

This subtitle and the amendment made by section 512 shall apply with respect to all employment contracts in force before, on, or after the date of enactment of this subtitle.

Subtitle C—Expert Witness Fees

SEC. 521. PURPOSE.

The purpose of this subtitle is to allow recovery of expert fees by prevailing parties under civil rights fee-shifting statutes.

SEC. 522. FINDINGS.

Congress finds the following:

(1) This subtitle is made necessary by the decision of the Supreme Court in West Virginia University Hospitals Inc. v. Casey, 499 U.S. 83 (1991). In Casey, the Court, per Justice Scalia, ruled that expert fees were not recoverable under section 722 of the Revised Statutes (42 U.S.C. 1988), as amended by the Civil Rights Attorneys' Fees Awards Act of 1976 (Public Law 94–559; 90 Stat. 2641), because the Civil Rights Attorneys' Fees Awards Act of 1976 expressly authorized an award of an ''attorney's fee'' to a prevailing party but said nothing expressly about expert fees.

(2) This subtitle is especially necessary both because of the important roles played by experts in civil rights litigation and because expert fees often represent a major cost of the litigation. In fact, in Casey itself, as pointed out by Justice Stevens in dissent, the district court had found that the expert witnesses were ''essential'' and ''necessary'' to the successful prosecution of the plaintiffs case, and the expert fees were not paltry but amounted to $104,133. Justice Stevens also pointed out that the majority opinion requiring the plaintiff to ''assume the cost of $104,133 in expert witness fees is at war with the congressional purpose of making the prevailing party whole.''. Casey (499 U.S. at 111).

(3) Much of the rationale for denying expert fees as part of the shifting of attorney's fees under provisions of law such as section 722 of the Revised Statutes (42 U.S.C. 1988), whose language does not expressly include expert fees, was based on the fact that many fee-shifting statutes enacted by Congress ''explicitly shift expert witness fees as well as attorney's fees.''. Casey (499 U.S. at 88). In fact, Justice Scalia pointed out that in 1976—the same year that Congress amended section 722 of the Revised Statutes (42 U.S.C. 1988) by providing for the shifting of attorney's fees—Congress expressly authorized the shifting of attorney's fees and of expert fees in the Toxic Substances Control Act (15 U.S.C. 2601 et seq.), the Consumer Product Safety Act (15 U.S.C. 2051 et seq.), the Resource Conservation and Recovery Act of 1976 (Public Law 94–580; 90 Stat. 2795), and the Natural Gas Pipeline Safety Act Amendments of 1976 (Public Law 94–477; 90 Stat. 2073). Casey (499 U.S. at 88). Congress had done the same in other years on dozens of occasions. Casey (499 U.S. at 88–90 & n. 4).

(4) In the same year that the Supreme Court decided Casey, Congress responded quickly but only through the Civil Rights Act of 1991 (Public Law 102–166; 105 Stat. 1071) by amending title VII of the Civil Rights Act of 1964 (42 U.S.C. 2000e et seq.) and section 722 of the Revised Statutes (42 U.S.C. 1988) with express authorizations of the recovery of expert fees in successful employment discrimination litigation. It is long past time to correct, in Federal civil rights litigation, Casey's denial of expert fees.

SEC. 523. EFFECTIVE PROVISIONS.

(a) SECTION 722 OF THE REVISED STATUTES.—Section 722 of the Revised Statutes (42 U.S.C. 1988) is amended—

(1) in subsection (b), by inserting ''(including expert fees)'' after ''attorney's fee''; and

(2) by striking subsection (c).

(b) FAIR LABOR STANDARDS ACT OF 1938.—Section 16(b) of the Fair Labor Standards Act of 1938 (29 U.S.C. 216(b)) is amended by inserting ''(including expert fees)'' after ''attorney's fee''.

(c) VOTING RIGHTS ACT OF 1965.—Section 14(e) of the Voting Rights Act of 1965 (42 U.S.C. 1973*l*(e)) is amended by inserting ''(including expert fees)'' after ''attorney's fee''.

(d) FAIR HOUSING ACT.—Title VIII of the Civil Rights Act of 1968 (42 U.S.C. 3601 et seq.) is amended—

(1) in section 812(p), by inserting ''(including expert fees)'' after ''attorney's fee'';

(2) in section 813(c)(2), by inserting ''(including expert fees)'' after ''attorney's fee''; and

(3) in section 814(d)(2), by inserting ''(including expert fees)'' after ''attorney's fee''.

(e) IDEA.—Section 615(i)(3)(B) of the Individuals with Disabilities Education Act (20 U.S.C. 1415(i)(3)(B)) is amended by inserting ''(including expert fees)'' after ''attorney's fees''.

(f) CIVIL RIGHTS ACT OF 1964.—Section 204(b) of the Civil Rights Act of 1964 (42 U.S.C. 2000a-3(b)) is amended by inserting ''(including expert fees)'' after ''attorney's fee''.

(g) REHABILITATION ACT OF 1973.—Section 505(b) of the Rehabilitation Act of 1973 (29 U.S.C. 794a(b)) is amended by inserting ''(including expert fees)'' after ''attorney's fee''.

(h) EQUAL CREDIT OPPORTUNITY ACT.—Section 706(d) of the Equal Credit Opportunity Act (15 U.S.C. 1691e(d)) is amended by inserting ''(including expert fees)'' after ''attorney's fee''.

(i) FAIR CREDIT REPORTING ACT.—The Fair Credit Reporting Act (15 U.S.C. 1681 et seq.) is amended—

(1) in section 616(a)(3), by inserting ''(including expert fees)'' after ''attorney's fees''; and

(2) in section 617(a)(2), by inserting ''(including expert fees)'' after ''attorney's fees''.

(j) FREEDOM OF INFORMATION ACT.—Section 552(a)(4)(E) of title 5, United States Code, is amended by inserting ''(including expert fees)'' after ''attorney fees''.

(k) PRIVACY ACT.—Section 552a(g) of title 5, United States Code, is amended—

(1) in paragraph (2)(B), by inserting ''(including expert fees)'' after ''attorney fees'';

(2) in paragraph (3)(B), by inserting ''(including expert fees)'' after ''attorney fees''; and

(3) in paragraph (4)(B), by inserting ''(including expert fees)'' after ''attorney fees''.

(l) TRUTH IN LENDING ACT.—Section 130(a)(3) of the Truth in Lending Act (15 U.S.C. 1640(a)(3)) is amended by inserting ''(including expert fees)'' after ''attorney's fee''.

Subtitle D—Equal Remedies Act of 2004

SEC. 531. SHORT TITLE.

This subtitle may be cited as the ''Equal Remedies Act of 2004''.

SEC. 532. EQUALIZATION OF REMEDIES.

Section 1977A of the Revised Statutes (42 U.S.C. 1981a), as added by section 102 of the Civil Rights Act of 1991, is amended—

(1) in subsection (b)—

(A) by striking paragraph (3); and

(B) by redesignating paragraph (4) as paragraph (3); and

(2) in subsection (c), by striking ''section—'' and all that follows through the period, and inserting ''section, any party may demand a jury trial.''.

TITLE VI—PROHIBITIONS AGAINST SEX DISCRIMINATION

SEC. 601. SHORT TITLE.

This title may be cited as the ''Paycheck Fairness Act''.

SEC. 602. FINDINGS.

Congress makes the following findings:

(1) Women have entered the workforce in record numbers.

(2) Even today, women earn significantly lower pay than men for work on jobs that require equal skill, effort, and responsibility and that are performed under similar working conditions. These pay disparities exist in both the private and governmental sectors. In many instances, the pay disparities can only be due to continued intentional discrimination or the lingering effects of past discrimination.

(3) The existence of such pay disparities—

(A) depresses the wages of working families who rely on the wages of all members of the family to make ends meet;

(B) prevents the optimum utilization of available labor resources;

(C) has been spread and perpetuated, through commerce and the channels and instrumentalities of commerce, among the workers of the several States;

(D) burdens commerce and the free flow of goods in commerce;

(E) constitutes an unfair method of competition in commerce;

(F) leads to labor disputes burdening and obstructing commerce and the free flow of goods in commerce;

(G) interferes with the orderly and fair marketing of goods in commerce; and

(H) in many instances, may deprive workers of equal protection on the basis of sex in violation of the 5th and 14th amendments.

(4)(A) Artificial barriers to the elimination of discrimination in the payment of wages on the basis of sex continue to exist decades after the enactment of the Fair Labor Standards Act of 1938 (29 U.S.C. 201 et seq.) and the Civil Rights Act of 1964 (42 U.S.C. 2000a et seq.).

(B) Elimination of such barriers would have positive effects, including—

(i) providing a solution to problems in the economy created by unfair pay disparities;

(ii) substantially reducing the number of working women earning unfairly low wages, thereby reducing the dependence on public assistance;

(iii) promoting stable families by enabling all family members to earn a fair rate of pay;

(iv) remedying the effects of past discrimination on the basis of sex and ensuring that in the future workers are afforded equal protection on the basis of sex; and

(v) ensuring equal protection pursuant to Congress's power to enforce the 5th and 14th amendments.

(5) With increased information about the provisions added by the Equal Pay Act of 1963 and wage data, along with more effective remedies, women will be better able to recognize and enforce their rights to equal pay for work on jobs that require equal skill, effort, and responsibility and that are performed under similar working conditions.

(6) Certain employers have already made great strides in eradicating unfair pay disparities in the workplace and their achievements should be recognized.

SEC. 603. ENHANCED ENFORCEMENT OF EQUAL PAY REQUIREMENTS.

(a) REQUIRED DEMONSTRATION FOR AFFIRMATIVE DEFENSE.—Section 6(d)(1) of the Fair Labor Standards Act of 1938 (29 U.S.C. 206(d)(1)) is amended by striking ''(iv) a differential'' and all that follows through the period and inserting the following: ''(iv) a differential based on a bona fide factor other than sex, such as education, training or experience, except that this clause shall apply only if—

''(I) the employer demonstrates that—

''(aa) such factor—

''(AA) is job-related with respect to the position in question; or

''(BB) furthers a legitimate business purpose, except that this item shall not apply where the employee demonstrates that an alternative employment practice exists that would serve the same business purpose without producing such differential and that the employer has refused to adopt such alternative practice; and

''(bb) such factor was actually applied and used reasonably in light of the asserted justification; and

''(II) upon the employer succeeding under subclause (I), the employee fails to demonstrate that the differential produced by the reliance of the employer on such factor is itself the result of discrimination on the basis of sex by the employer.

An employer that is not otherwise in compliance with this paragraph may not reduce the wages of any employee in order to achieve such compliance.''.

(b) APPLICATION OF PROVISIONS.—Section 6(d)(1) of the Fair Labor Standards Act of 1938 (29 U.S.C. 206(d)(1)) is amended by adding at the end the following: ''The provisions of this subsection shall apply to applicants for employment if such applicants, upon employment by the employer, would be subject to any provisions of this section.''.

(c) ELIMINATION OF ESTABLISHMENT REQUIREMENT.—Section 6(d) of the Fair Labor Standards Act of 1938 (29 U.S.C. 206(d)) is amended—

(1) by striking '', within any establishment in which such employees are employed,''; and

(2) by striking ''in such establishment'' each place it appears.

(d) NONRETALIATION PROVISION.—Section 15(a)(3) of the Fair Labor Standards Act of 1938 (29 U.S.C. 215(a)(3)) is amended—

(1) by striking ''or has'' each place it appears and inserting ''has''; and

(2) by inserting before the semicolon the following: '', or has inquired about, discussed, or otherwise disclosed the wages of the employee or another employee, or because the employee (or applicant) has made a charge, testified, assisted, or participated in any manner in an investigation, proceeding, hearing, or action under section 6(d)''.

(e) ENHANCED PENALTIES.—Section 16(b) of the Fair Labor Standards Act of 1938 (29 U.S.C. 216(b)) is amended—

(1) by inserting after the first sentence the following: ''Any employer who violates section 6(d) shall additionally be liable for such compensatory or punitive damages as may be appropriate, except that the United States shall not be liable for punitive damages.'';

(2) in the sentence beginning ''An action to'', by striking ''either of the preceding sentences'' and inserting ''any of the preceding sentences of this subsection'';

(3) in the sentence beginning ''No employees shall'', by striking ''No employees'' and inserting ''Except with respect to class actions brought to enforce section 6(d), no employee'';

(4) by inserting after the sentence referred to in paragraph (3), the following: ''Notwithstanding any other provision of Federal law, any action brought to enforce section 6(d) may be maintained as a class action as provided by the Federal Rules of Civil Procedure.''; and

(5) in the sentence beginning ''The court in''—

(A) by striking ''in such action'' and inserting ''in any action brought to recover the liability prescribed in any of the preceding sentences of this subsection''; and

(B) by inserting before the period the following: '', including expert fees''.

(f) ACTION BY SECRETARY.—Section 16(c) of the Fair Labor Standards Act of 1938 (29 U.S.C. 216(c)) is amended—

(1) in the first sentence—

(A) by inserting ''or, in the case of a violation of section 6(d), additional compensatory or punitive damages,'' before ''and the agreement''; and

(B) by inserting before the period the following: '', or such compensatory or punitive damages, as appropriate'';

(2) in the second sentence, by inserting before the period the following: ''and, in the case of a violation of section 6(d), additional compensatory or punitive damages'';

(3) in the third sentence, by striking ''the first sentence'' and inserting ''the first or second sentence''; and

(4) in the last sentence—

(A) by striking ''commenced in the case'' and inserting ''commenced—

''(1) in the case'';

(B) by striking the period and inserting ''; or''; and

(C) by adding at the end the following:

''(2) in the case of a class action brought to enforce section 6(d), on the date on which the individual becomes a party plaintiff to the class action.''.

SEC. 604. TRAINING.

The Equal Employment Opportunity Commission and the Office of Federal Contract Compliance Programs, subject to the availability of funds appropriated under section 609, shall provide training to Commission employees and affected individuals and entities on matters involving discrimination in the payment of wages.

SEC. 605. RESEARCH, EDUCATION, AND OUTREACH.

The Secretary of Labor shall conduct studies and provide information to employers, labor organizations, and the general public concerning the means available to eliminate pay disparities between men and women, including—

(1) conducting and promoting research to develop the means to correct expeditiously the conditions leading to the pay disparities;

(2) publishing and otherwise making available to employers, labor organizations, professional associations, educational institutions, the media, and the general public the findings resulting from studies and other materials, relating to eliminating the pay disparities;

(3) sponsoring and assisting State and community informational and educational programs;

(4) providing information to employers, labor organizations, professional associations, and other interested persons on the means of eliminating the pay disparities;

(5) recognizing and promoting the achievements of employers, labor organizations, and professional associations that have worked to eliminate the pay disparities; and

(6) convening a national summit to discuss, and consider approaches for rectifying, the pay disparities.

SEC. 606. TECHNICAL ASSISTANCE AND EMPLOYER RECOGNITION PROGRAM.

(a) GUIDELINES.—

(1) IN GENERAL.—The Secretary of Labor shall develop guidelines to enable employers to evaluate job categories based on objective criteria such as educational requirements, skill requirements, independence, working conditions, and responsibility, including decisionmaking responsibility and de facto supervisory responsibility.

(2) USE.—The guidelines developed under paragraph (1) shall be designed to enable employers voluntarily to compare wages paid for different jobs to determine if the pay scales involved adequately and fairly reflect the educational requirements, skill requirements, independence, working conditions, and responsibility for each such job with the goal of eliminating unfair pay disparities between occupations traditionally dominated by men or women.

(3) PUBLICATION.—The guidelines shall be developed under paragraph (1) and published in the Federal Register not later than 180 days after the date of enactment of this title.

(b) EMPLOYER RECOGNITION.—

(1) PURPOSE.—It is the purpose of this subsection to emphasize the importance of, encourage the improvement of, and recognize the excellence of employer efforts to pay wages to women that reflect the real value of the contributions of such women to the workplace.

(2) IN GENERAL.—To carry out the purpose of this subsection, the Secretary of Labor shall establish a program under which the Secretary shall provide for the recognition of employers who, pursuant to a voluntary job evaluation conducted by the employer, adjust their wage scales (such adjustments shall not include the lowering of wages paid to men) using the guidelines developed under subsection (a) to ensure that women are paid fairly in comparison to men.

(3) TECHNICAL ASSISTANCE.—The Secretary of Labor may provide technical assistance to assist an employer in carrying out an evaluation under paragraph (2).

(c) REGULATIONS.—The Secretary of Labor shall promulgate such rules and regulations as may be necessary to carry out this section.

SEC. 607. ESTABLISHMENT OF THE NATIONAL AWARD FOR PAY EQUITY IN THE WORKPLACE.

(a) IN GENERAL.—There is established the Secretary of Labor's National Award for Pay Equity in the Workplace, which shall be evidenced by a medal bearing the inscription ''Secretary of Labor's National Award for Pay Equity in the Workplace''. The medal shall be of such design and materials, and bear such additional inscriptions, as the Secretary of Labor may prescribe.

(b) CRITERIA FOR QUALIFICATION.—To qualify to receive an award under this section a business shall—

(1) submit a written application to the Secretary of Labor, at such time, in such manner, and containing such information as the Secretary may require, including at a minimum information that demonstrates that the business has made substantial effort to eliminate pay disparities between men and women, and deserves special recognition as a consequence; and

(2) meet such additional requirements and specifications as the Secretary of Labor determines to be appropriate.

(c) MAKING AND PRESENTATION OF AWARD.—

(1) AWARD.—After receiving recommendations from the Secretary of Labor, the President or the designated representative of the President shall annually present the award described in subsection (a) to businesses that meet the qualifications described in subsection (b).

(2) PRESENTATION.—The President or the designated representative of the President shall present the award under this section with such ceremonies as the President or the designated representative of the President may determine to be appropriate.

(d) BUSINESS.—In this section, the term ''business'' includes—

(1)(A) a corporation, including a nonprofit corporation;

(B) a partnership;

(C) a professional association;

(D) a labor organization; and

(E) a business entity similar to an entity described in any of subparagraphs (A) through (D);

(2) an entity carrying out an education referral program, a training program, such as an apprenticeship or management training program, or a similar program; and

(3) an entity carrying out a joint program, formed by a combination of any entities described in paragraph (1) or (2).

SEC. 608. COLLECTION OF PAY INFORMATION BY THE EQUAL EMPLOYMENT OPPORTUNITY COMMISSION.

Section 709 of the Civil Rights Act of 1964 (42 U.S.C. 2000e–8) is amended by adding at the end the following:

''(f)(1) Not later than 18 months after the date of enactment of this subsection, the Commission shall—

''(A) complete a survey of the data that is currently available to the Federal Government relating to employee pay information for use in the enforcement of Federal laws prohibiting pay discrimination and, in consultation with other relevant Federal agencies, identify additional data collections that will enhance the enforcement of such laws; and

''(B) based on the results of the survey and consultations under subparagraph (A), issue regulations to provide for the collection of pay information data from employers as described by the sex, race, and national origin of employees.

''(2) In implementing paragraph (1), the Commission shall have as its primary consideration the most effective and efficient means for enhancing the enforcement of Federal laws prohibiting pay discrimination. For this purpose, the Commission shall consider factors including the imposition of burdens on employers, the frequency of required reports (including which employers should be required to prepare reports), appropriate protections for maintaining data confidentiality, and the most effective format for the data collection reports.''.

SEC. 609. AUTHORIZATION OF APPROPRIATIONS.

There are authorized to be appropriated such sums as may be necessary to carry out this title.

TITLE VII—PROTECTIONS FOR WORKERS

Subtitle A—Protection for Undocumented Workers

SEC. 701. FINDINGS.

Congress finds the following:

(1) The National Labor Relations Act (29 U.S.C. 151 et seq.) (in this subtitle referred to as the ''NLRA''), enacted in 1935, guarantees the right of employees to organize and to bargain collectively with their employers. The NLRA implements the national labor policy of assuring free choice and encouraging collective bargaining as a means of maintaining industrial peace. The National Labor Relations Board (in this subtitle referred to as the ''NLRB'') was created by Congress to enforce the provisions of the NLRA.

(2) Under section 8 of the NLRA, employers are prohibited from discriminating against employees ''in regard to hire or tenure of employment or any term or condition of employment to encourage or discourage membership in any labor organization''. (29 U.S.C. 158(a)(3)). Employers who violate these provisions are subject to a variety of sanctions, including reinstatement of workers found to be illegally discharged because of their union support or activity and provision of backpay to those employees. Such sanctions serve to remedy and deter illegal actions by employers.

(3) In Hoffman Plastic Compounds Inc. v. NLRB, 535 U.S. 137 (2002), the Supreme Court held by a 5 to 4 vote that Federal immigration policy, as articulated in the Immigration Reform and Control Act of 1986, prevented the NLRB from awarding backpay to an undocumented immigrant who was discharged in violation of the NLRA because of his support for union representation at his workplace.

(4) The decision in Hoffman has an impact on all employees, regardless of immigration or citizenship status, who try to improve their working conditions. In the wake of Hoffman Plastics, employers may be more likely to report to the Department of Homeland Security minority workers, regardless of their immigration or citizenship status, who pursue claims under the NLRA against their employers. Fear that employers may retaliate against employees that exercise their rights under the NLRA has a chilling effect on all employees who exercise their labor rights.

(5) The NLRA is not the only Federal employment statute that provides for a backpay award as a remedy for an unlawful discharge. For example, courts routinely award backpay to employees who are found to have been discharged in violation of title VII of the Civil Rights Act of 1964 (42 U.S.C. 2000e et seq.) or the Fair Labor Standards Act of 1938 (29 U.S.C. 201 et seq.) (in retaliation for complaining about a failure to comply with the minimum wage). In the wake of the Hoffman decision, defendant employers will now argue that backpay awards to unlawfully discharged undocumented workers are barred under Federal employment statutes and even under State employment statutes.

(6) Because the Hoffman decision prevents the imposition of sanctions on employers who discriminate against undocumented immigrant workers, employers are encouraged to employ such workers for low-paying and dangerous jobs because they have no legal redress for violations of the law. This creates an economic incentive for employers to hire and exploit undocumented workers, which in turn tends to undermine the living standards and working conditions of all Americans, citizens and noncitizens alike.

(7) The Hoffman decision disadvantages many employers as well. Employers who are forced to compete with firms that hire and exploit undocumented immigrant workers are saddled with an economic disadvantage in the labor marketplace. The unintended creation of an economic inducement for employers to exploit undocumented immigrant workers gives those employers an unfair competitive advantage over employers that treat workers lawfully and fairly.

(8) The Court's decision in Hoffman makes clear that ''any 'perceived deficiency in the NLRA's existing remedial arsenal' must be 'addressed by congressional action[.]' '' Hoffman Plastic Compounds Inc. v. NLRB, 535 U.S. 137, 152 (2002) (quoting Sure-Tan, Inc. v. NLRB, 467 U.S. 883, 904 (1984)). In emphasizing the importance of back pay awards, Justice Breyer noted that such awards against employers ''help[] to deter unlawful activity that both labor laws and immigration laws seek to prevent''. Hoffman Plastic Compounds Inc. v. NLRB, 535 U.S. 137, 152 (2002). Because back pay awards are designed both to remedy the individual's private right to be free from discrimination as well as to enforce the important public policy against discriminatory employment practices, Congress must take the following corrective action.

SEC. 702. CONTINUED APPLICATION OF BACKPAY REMEDIES.

(a) IN GENERAL.—Section 274A(h) of the Immigration and Nationality Act (8 U.S.C. 1324a(h)) is amended by adding at the end the following:

''(4) BACKPAY REMEDIES.—Backpay or other monetary relief for unlawful employment practices shall not be denied to a present or former employee as a result of the employer's or the employee's—

''(A) failure to comply with the requirements of this section; or

''(B) violation of a provision of Federal law related to the employment verification system described in subsection (b) in establishing or maintaining the employment relationship.''.

(b) EFFECTIVE DATE.—The amendment made by subsection (a) shall apply to any failure to comply or any violation that occurs prior to, on, or after the date of enactment of this title.

Subtitle B—Fair Labor Standards Act Amendments

SEC. 711. SHORT TITLE.

This subtitle may be cited as the ''Workers' Minimum Wage and Overtime Rights Restoration Act of 2004''.

SEC. 712. FINDINGS.

Congress finds the following with respect to the Fair Labor Standards Act of 1938 (29 U.S.C. 201 et seq.) (in this subtitle referred to as the ''FLSA''):

(1) Since 1974, the FLSA has regulated States with respect to the payment of minimum wage and overtime rates. In Garcia v. San Antonio Metropolitan Transit Authority, 469 U.S. 528 (1985), the Supreme Court upheld Congress's constitutional authority

to regulate States in the payment of minimum wages and overtime. The prohibitions of the FLSA remain in effect and continue to apply to the States.

(2) Wage and overtime violations in employment remain a serious problem both nationally and among State and other public and private entities receiving Federal financial assistance, and has invidious effects on its victims, the labor force, and the general welfare and economy as a whole. For example, seven State governments have no overtime laws at all. Fourteen State governments have minimum wage and overtime laws; however, they exclude employees covered under the FLSA. As such, public employees, since they are covered under the FLSA are not protected under these State laws. Additionally, four States have minimum wage and overtime laws which are inferior to the FLSA. Further, the Department of Labor continues to receive a substantial number of wage and overtime charges against State government employers.

(3) Private civil suits by the victims of employment law violations have been a crucial tool for enforcement of the FLSA. In Alden v. Maine, 527 U.S. 706 (1999), however, the Supreme Court held that Congress lacks the power under the 14th amendment to the Constitution to abrogate State sovereign immunity to suits for legal relief by individuals under the FLSA. The Federal Government has an important interest in ensuring that Federal financial assistance is not used to facilitate violations of the FLSA, and private civil suits for monetary relief are a critical tool for advancing that interest.

(4) After the Alden decision, wage and overtime violations by State employers remain unlawful, but victims of such violations lack important remedies for vindication of their rights available to all other employees covered by the FLSA. In the absence of the deterrent effect that such remedies provide, there is a great likelihood that State entities carrying out federally funded programs and activities will use Federal financial assistance to violate the FLSA, or that the Federal financial assistance will otherwise subsidize or facilitate FLSA violations.

(5) The Supreme Court has upheld Congress's authority to condition receipt of Federal financial assistance on acceptance by State or other covered entities of conditions regarding or related to the use of those funds, as in Cannon v. University of Chicago, 441 U.S. 677 (1979).

(6) The Court has further recognized that Congress may require State entities, as a condition of receipt of Federal financial assistance, to waive their State sovereign immunity to suits for a violation of Federal law, as in College Savings Bank v. Florida Prepaid Postsecondary Education Expense Board, 527 U.S. 666 (1999).

(7) In the wake of the Alden decision, it is necessary, in order to foster greater compliance with, and adequate remedies for violations of, the FLSA, particularly in federally funded programs or activities operated by State entities, to require State entities to consent to a waiver of State sovereign immunity as a condition of receipt of such Federal financial assistance.

(8) The Supreme Court has repeatedly held that State sovereign immunity does not bar suits for prospective injunctive relief brought against State officials acting in their official capacity, as in Ex parte Young (209 U.S. 123 (1908)). The injunctive relief available in such suits under the FLSA will continue to be the same as that which was available under those laws prior to enactment of this subtitle.

SEC. 713. PURPOSES.

The purposes of this subtitle are—

(1) to provide to State employees in programs or activities that receive or use Federal financial assistance the same rights and remedies for practices violating the FLSA as are available to other employees under the FLSA, and that were available to State employees prior to the Supreme Court's decision in Alden v. Maine, 527 U.S. 706 (1999);

(2) to provide that the receipt or use of Federal financial assistance for a program or activity constitutes a State waiver of sovereign immunity from suits by employees within that program or activity for violations of the FLSA; and

(3) to affirm that suits for injunctive relief are available against State officials in their official capacities for violations of the FLSA.

SEC. 714. REMEDIES FOR STATE EMPLOYEES.

Section 16 of the Fair Labor Standards Act of 1938 (29 U.S.C. 216) is amended by adding at the end the following:

''(f)(1) A State's receipt or use of Federal financial assistance for any program or activity of a State shall constitute a waiver of sovereign immunity, under the 11th amendment to the Constitution or otherwise, to a suit brought by an employee of that program or activity under this Act for equitable, legal, or other relief authorized under this Act.

''(2) In this subsection, the term 'program or activity' has the meaning given the term in section 309 of the Age Discrimination Act of 1975 (42 U.S.C. 6107).''.

Mr. HARKIN. Mr. President, I am proud to cosponsor the Fairness and Individual Rights Necessary to Ensure a Stronger Society: The Civil Rights Act of 2004, known as the Fairness Act. In recent years. the Supreme Court has worked to chip away at civil rights laws. This legislation is designed to address many of these decisions, particularly with respect to statutes governing recipients of federal assistance.

This bill is important to all Americans because it ensures that everyone will be treated with fairness and equity under the laws of this country. As a longstanding advocate for disability rights, I am particularly pleased that this bill will reverse some decisions that have limited civil rights protections for people with disabilities.

For example, this legislation will reverse some Supreme Court cases which limit the damage awards for intentional discrimination. A recent egregious example is Barnes v. Gorman, 536 U.S. 181, 2002. This case was brought by an individual who used a wheelchair and was forced into a police van that was not equipped with the proper restraints. Despite his objections to the officers, the individual was strapped in with improper belts that came loose, throwing him to the floor. The Supreme Court held that this individual could not seek punitive damages under the Americans with Disabilities Act and Section 504 of the Rehabilitation Act for this mistreatment. The Fairness Act will restore his rights and those of others who have suffered discrimination.

It will also reverse Buchannon Bd. & Care Home, Inc. v. West Virginia Dep't of Health & Human Resources, 532 U.S. 598, 2001. In that case, the defendant had been sued under the ADA and the Fair Housing Act. The Court held that even if the lawsuit causes the defendants to voluntarily make changes, the plaintiff cannot recover attorneys' fees unless he or she has been awarded relief by a court. This case has made it extremely difficult to find attorneys to take disability cases.

The Fairness Act will also clarify that passengers with disabilities may sue for violations of the Air Carriers Access Act, ACCA, and its regulations. A circuit court recently applied the Supreme Court's decision in Alexander v. Sandoval, 532 U.S. to prohibit suits under the ACAA. Congress intended that individuals have the ability to seek redress for violations of this statute.

The bill, however, does not address individuals with disabilities in some areas because Congress already has provided clear protection for them. So, for example, Congress has clearly indicated that a private right of action exists to enforce disparate impact disability-based discrimination under Section 504 of the Rehabilitation Act. Congress approved of the regulations promulgated to implement section 504 and incorporated these regulations into the statutory requirements of the Americans with Disabilities Act of 1990.

The bill also does not address the disability-specific negative decisions of the Supreme Court. These decisions have undermined the ADA by dramatically narrowing those who are covered under the Act and imposing other restrictions. As the lead sponsor of the ADA in the Senate, I believe that these cases directly conflict with congressional intent. I am working with the disability community and others to address these cases.

The Fairness Act is aptly named. It is designed to ensure that everyone is treated equally under the law and that America will be a Nation that protects and enforces the civil rights of all its citizens.

By Mr. FRIST (for himself, Ms. LANDRIEU, Mr. COCHRAN, Mr. DEWINE, Mr. BOND, Mr. WARNER, Mr. TALENT, and Mrs. HUTCHISON):

S. 2091. A bill to improve the health of health disparity population; to the Committee on Health, Education, Labor, and Pensions.

Mr. FRIST. Mr. President, I am proud to join today with Senator MARY LANDRIEU, Senator THAD COCHRAN, Senator MIKE DEWINE, Senator CHRISTOPHER BOND, Senator JAMES TALENT, Senator JOHN WARNER, and Senator KAY BAILEY HUTCHISON to introduce the ''Closing the Health Care Gap Act of 2004.''

Earlier today, I was pleased to be joined at a press conference by an impressive array of leaders in this fight—Dr. Louis Sullivan, Dr. Rene Rodriguez, Dr. Randall Maxey, Dr. John Maupin, and Dr. James Gavin. I appreciate their support for this legislation, and also appreciate the support

of other national leaders committed to closing the health care disparity gap in America.

Last May, in a speech to graduating students and families at Morehouse University's School of Medicine, I outlined a framework for action to combat disparities. Since then, I have reached out broadly and worked with a wide range of stakeholders and leaders to gather their input and ideas to ensure the legislation we are introducing today includes the best possible strategies to eliminate health disparities. I am also proud to be joined today by a number of colleagues who are committed to this cause. I particularly want to thank Senator LANDRIEU for working across party lines on this bipartisan legislation.

As former Surgeon General Louis W. Sullivan, MD, said at a press briefing earlier today on this legislation, ''[e]thnic minorities represent the fastest growing segment of the U.S. population, and therefore, it is critical that we have a sustained and coordinated commitment to addressing this national problem. The ''Closing the Health Care Gap Act'' seeks to do that. . .''

This legislation builds on past bipartisan efforts to address disparities in our health care system—most importantly, the ''Minority Health and Health Disparities Research and Education Act of 2000,'' which I authored with Senator EDWARD KENNEDY.

The legislation we are introducing today goes much farther.

Over recent years, we have made tremendous advances in our knowledge of and fight against disease. But we know that millions of Americans still experience disparities in health outcomes as a result of ethnicity, race, gender, or limited access to quality health care. For example, disparity populations exhibit poorer health outcomes and have higher rates of HIV/AIDS, diabetes, infant mortality, cancer, heart disease, and other illnesses.

African Americans and Native Americans die younger than any other racial or ethnic group.

African Americans and Native American babies die at significantly higher rates than the rest of the population.

African Americans, Native Americans, and Hispanic Americans are at least twice as likely to suffer from diabetes and experience serious complications from diabetes.

These gaps are simply unacceptable in America today. Let me repeat, they are unacceptable. And, today, we begin a new and aggressive effort to address these inequities.

The root causes of the health care disparities are multiple and certainly complex. That is why we need a broad and comprehensive approach to reduce and eliminate these disparities. This legislation takes a bold step in that direction.

Many of our Nation's smartest minds have examined this problem in detail. The Institute of Medicine (IOM) in its landmark report ''Unequal Treatment,'' concluded that health care disparities are caused by socioeconomic factors, language barriers, access to services problems, behavioral risk factors, and cultural issues including, unfortunately, mistrust and misunderstanding of some patients toward the health care system.

The ''Closing the Health Care Gap Act'' directly addresses the root causes of health care disparities by focusing on five key areas: expanding access to quality health care; strengthening national leadership efforts and coordination; helping increase the diversity of health professionals; promoting more aggressive health professional education intended to reduce barriers to care; and enhancing research to identify sources of racial, ethnic, and geographic disparities and assess promising intervention strategies.

More specifically, this bill: promotes improved understanding of the quality of health care delivered to racial and ethnic minorities and health disparity populations; improves collection and reporting of data on the health care of racial and ethnic minorities and health disparity populations; reduces some of the fragmentation of health care delivery experienced by disparity populations; strengthens the doctor-patient relationship by providing a series of tools to improve communication and continuity of care; supports the use of community health workers; supports the implementation of multidisciplinary treatment and preventive care teams; improves education and information to allow patients to better manage and control their own care; and increases the proportion of racial and ethnic minorities among health professionals.

It is important that we act, as well, because health care disparities magnify many of the quality deficiencies in our overall health care system. This point was well documented by the IOM in a series of reports issued during the past several years. Therefore, the bill takes aggressive steps to improve the quality of health care for all Americans.

A key part of this effort necessarily involves the need to strive for greater standardization of health data collection. At the same time, we must ensure that this information allows us to better identify and address gaps in our health care system by including important information about patients' race and ethnicity.

While the Federal Government has a critical role to play, it is important to remember that government alone is incapable of closing the care and treatment gaps which exist in our health care system. Therefore, the legislation promotes partnerships between the Government and the private sector, and fosters collaboration at the community level to improve care, as well as access to care.

The bill expands access to quality health care for minority and underserved patients through a community-based model that seeks to help patients utilize health coverage that may be available, to provide health system patient navigator services so that they may best utilize available coverage, to emphasize health awareness, prevention and health literacy efforts so that patients can effectively take part in their or their children's treatment decisions, and to improve chronic disease management.

Turning our back on these health disparity problems would be a national failure. Every American deserves the best quality of health care possible, regardless of their race, ethnicity, gender, or where they live.

Again, I appreciate the commitment of many of my colleagues. Together, I know we can make great progress against this critical problem.

There is a growing awareness on the national level of the existence and importance of the serious disparities in the quality of health care that many minority and underserved Americans receive. This presents us with an important opportunity to move forward.

My intention is to continue to build this national awareness, which can provide the basis for bipartisan efforts to fight and reduce these disparities. Today's bipartisan bill introduction represents a key step in this process.

I would like to very quickly thank some of the organizations that are supporting this bill: Interamerican College of Physicians and Surgeons, National Hispanic Medical Association, National Medical Association, The National Conference for Community and Justice, The Association of Minority Health Professions Schools, National Urban League, American Association of Family Physicians, National Patient Advocate Foundation, National Association of Community Health Centers, Health Choice Network, National Association of Public Hospitals, American Hospital Association, The Endocrine Society, St. Thomas Health Services, Ascension Health, The American Society of Transplantation.

With this strong base of initial support, the broad consensus that is beginning to emerge on this issue, and the bipartisan commitment of so many, it is my hope that we can make real progress toward eliminating health care disparities and end—once and for all—this intolerable blight on our Nation.

By Mrs. HUTCHISON (for herself, Mr. BROWNBACK, Mr. BUNNING, Mr. CHAMBLISS, and Mr. COCHRAN):

S. 2093. A bill to maintain full marriage tax penalty relief for 2005; to the Committee on Finance.

Mrs. HUTCHISON. Mr. President, I am pleased to introduce a bill to continue relief from the marriage penalty—the most egregious, antifamily provision of the Tax Code. One of my highest priorities in the U.S. Senate has been to relieve American taxpayers of this punitive burden.

Last year, I worked with my colleagues and President Bush to pass a $350 billion jobs and economic growth package to put Americans back to work and stimulate the economy. We are now seeing the fruits of our efforts. The tax relief has left more money in the pockets of individuals and small businesses, freeing the engines of the economy. Private sector growth is strong, the stock market is up, and jobs are being created.

One of the most important provisions of the legislation provided immediate marriage penalty relief by raising the standard deduction and enlarging the 15-percent tax bracket for married joint filers to twice that of single filers. This provision will save 34 million married couples an average of almost $600 on their 2003 tax bills.

Enacting marriage penalty relief was a giant step for tax fairness, but it may be fleeting. Even as people begin to feel the benefits from the relief, a tax increase looms in the near future. Since the bill was restricted by limitations imposed by Congress, the marriage penalty provisions will only be in effect for 2 years. In 2005, marriage will again be a taxable event for millions of Americans.

Without relief, 48 percent of married couples will again pay more in taxes.

Even as the economy strengthens, many families face difficult choices in making ends meet. We must make sure we do not backtrack on this important reform.

The benefits of marriage are well established, but without marriage penalty relief, the Tax Code provides a significant disincentive for people to walk down the aisle. Marriage is a fundamental institution in our society and should not be discouraged by the IRS. Children living in a married household are far less likely to live in poverty or to suffer from child abuse. Research indicates they are less likely to be depressed or have developmental problems. Scourges such as adolescent drug use are less common in married families, and married mothers are less likely to be victims of domestic violence.

I have sought to make full marriage penalty relief permanent. However, given the current budget constraints and the politics of an election year, this will be difficult. I therefore am offering this bill to extend last year's victory for married couples for 1 year, through 2005.

As Valentine's Day approaches, we should celebrate marriage, not penalize it. We cannot be satisfied until couples never again must decide between love and money. Marriage should not be a taxable event.

I call on the Senate to build on the 2003 tax cuts and say ''I do'' to extending marriage penalty relief today.

Mr. President, I ask unanimous consent that a copy 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. 2093

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

SECTION 1. SHORT TITLE.

This Act may be cited as the ''Marriage Penalty Relief Extension Act of 2004''.

SEC. 2. FULL ELIMINATION OF THE MARRIAGE PENALTY FOR 2005.

(a) STANDARD DEDUCTION.—Paragraph (7) of section 63(c) of the Internal Revenue Code of 1986 (relating to applicable percentage) is amended by striking ''174'' and inserting ''200''.

(b) 15-PERCENT BRACKET.—Subparagraph (B) of section 1(f)(8) of the Internal Revenue Code of 1986 (relating to applicable percentage) is amended by striking ''180'' and inserting ''200''.

(c) EFFECTIVE DATE.—The amendments made by this section shall apply to taxable years beginning after December 31, 2003.

(d) APPLICATION OF EGTRRA SUNSET TO THIS SECTION.—Each amendment made by this section shall be subject to title IX of the Economic Growth and Tax Relief Reconciliation Act of 2001 to the same extent and in the same manner as the provision of such Act to which such amendment relates.

By Mr. CAMPBELL:

S.J. Res. 27. A joint resolution recognizing the 60th anniversary of the Allied landing at Normandy during World War II; to the Committee on the Judiciary.

Mr. CAMPBELL. Mr. President, it is a privilege to introduce a joint resolution commemorating the 60th anniversary of the June 6, 1944 landings in Normandy that paved the way for the liberation of Europe. Operation Overlord, code named D-Day, was the culmination of months of planning and strategic air attacks. Under cover of darkness 18,000 British and American airborne forces were deployed in the initial phase of the operation commanded by Supreme Allied Commander General Dwight D. Eisenhower. Combined Allied forces landed at Utah, Omaha, Gold, Juno and Sword as part of the largest air, land, and sea invasion ever undertaken. In all, over 5,000 ships and landing craft, 10,000 airplanes and 150,000 Allied forces took part in the operation.

An estimated 70,000 Americans took part in D-Day operations, including 225 U.S. Rangers who scaled the cliffs at Pointe du Hoc to capture German heavy artillery emplacements. American troops also landed at Utah beach, and at Omaha beach where they faced a myriad of challenges, including high seas, mines and elite German infantry forces.

In a radio address and prayer to the American people on the evening of June 6, President Franklin D. Roosevelt laid out the mission undertaken by G.I.s and Allied forces: ''They fight not for the lust of conquest, They fight to liberate. They fight to let justice arise, and tolerance and goodwill among all Thy people. They yearn but for the end of battle, for their return to the haven of home.'' During the evening of June 6, 1944 church bells tolled throughout America and in Philadelphia the Liberty Bell was rung as Americans awaited word from the rocky battlefield of northern France.

On that fateful day, 1,465 Americans laid down their lives on the field of battle. Another 3,184 were wounded, 1,928 missing, and 26 captured. In the days and weeks to follow, thousands more would spill their blood on French soil to liberate Europe. D-Day ushered in a series of battles over the next three months until the liberation of Paris in late August 1944.

In a very real sense, the fate of Europe hung in the balance of the success or failure of the D-Day operations. As a senior member of the Committee on Veterans Affairs, I am especially mindful of the tremendous sacrifice made by those men and women of the uniformed services who served with distinction at D-Day and throughout the course of World War II. Almost forty percent of U.S. service men and women were volunteers, with the duration of service for all troops averaging 33 months. Nearly 300,000 Americans made the supreme sacrifice during World War II, including the valiant troops that took part in D-Day.

I would take this opportunity to recognize the World War II military service of current members of the United States Senate: the Senator from Hawaii, Mr. INOUYE; the Senator from South Carolina, Mr. HOLLINGS; the Senator from Alaska, Mr. STEVENS; the Senator from Virginia, Mr. WARNER; the Senator from New Jersey, Mr. LAUTENBERG; and the Senator from Hawaii, Mr. AKAKA.

As Chairman of the Commission on Security and Cooperation in Europe, I had the privilege to lead a delegation of colleagues to the Normandy American Cemetery in July 2001, where we participated in ceremonies honoring Americans killed in D-Day operations. Maintained by the American Battle Monuments Commission, the cemetery is the final resting place for 9,386 American service men and women and honors the memory of the 1,557 missing. The superintendent of the cemetery noted that each year the sea surrenders the remains of Americans who fought and died in the service of freedom at home and abroad.

The Normandy American Cemetery, Mr. President, is the resting place for 100 Coloradans who gave their lives on the field of battle. From Toffoli and Sweeney to Martinez the roster is a testament to diversity of those from my home state of Colorado who answered the call to defend freedom along the rocky coast of a distant land.

I urge my colleagues to act quickly on this resolution which will commemorate the 60th anniversary of D-Day and honor those who so bravely served in that effort.

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

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

S.J. RES. 27

Whereas June 6, 2004, marks the 60th anniversary of D-Day, the first day of the Allied landing at Normandy during World War II by American, British, and Canadian troops;

Whereas the D-Day landing, known as Operation Overlord, was the most extensive amphibious operation ever to occur, involving on the first day of the operation 5,000 naval vessels, more than 11,000 sorties by Allied aircraft, and 153,000 soldiers, sailors, and airmen of the Allied Expeditionary Force;

Whereas the bravery and sacrifices of the Allied troops at 5 separate Normandy beaches and numerous paratrooper and glider landing zones began what Allied Supreme Commander Dwight D. Eisenhower called a ''Crusade in Europe'' to end Nazi tyranny and restore freedom and human dignity to millions of people;

Whereas that great assault by sea and air marked the beginning of the end of Hitler's ambition for world domination;

Whereas American troops suffered over 6,500 casualties on D-Day; and

Whereas the people of the United States should honor the valor and sacrifices of their fellow countrymen, both living and dead, who fought that day for liberty and the cause of freedom in Europe: Now, therefore, be it

Resolved by the Senate and House of Representatives of the United States of America in Congress assembled, That Congress—

(1) recognizes the 60th anniversary of the Allied landing at Normandy during World War II; and

(2) requests the President to issue a proclamation calling on the people of the United States to observe the anniversary with appropriate ceremonies and programs to honor the sacrifices of their fellow countrymen to liberate Europe.

SUBMITTED RESOLUTIONS

SENATE RESOLUTION 302—EXPRESSING THE SENSE OF THE SENATE THAT THE UNITED STATES SHOULD NOT SUPPORT THE FEBRUARY 20, 2004, ELECTIONS IN IRAN AND THAT THE UNITED STATES SHOULD SEEK A GENUINE DEMOCRATIC GOVERNMENT IN IRAN THAT WILL RESTORE FREEDOM TO THE IRANIAN PEOPLE AND WILL ABANDON TERRORISM

Mr. BROWNBACK (for himself, Mr. LEAHY, Mr. DEWINE, Mr. MCCAIN, Mr. WYDEN, Mr. BAYH, Mr. KYL, Mr. INHOFE, Mr. COLEMAN, Ms. LANDRIEU, and Mr. CHAMBLISS) submitted the following resolution; which was referred to the Committee on Foreign Relations:

S. RES. 302

Whereas there is a long history of mutual affection, appreciation, and respect between the people of the United States and the people of Iran, including the incalculable efforts by the United States in providing humanitarian, financial, and technological assistance to help the people of Iran;

Whereas the people of Iran have shown support for decency and freedom, and solidarity with the United States, including the demonstration of such support through candlelight vigils attended by the youth of Iran in the wake of the September 11, 2001, attacks upon the United States;

Whereas the Council of Guardians is a 12-member unelected body, composed of the most extreme anti-American, anti-democratic clerics, that has arbitrarily disqualified thousands of candidates, including sitting Members of the Parliament of Iran and members of the reformist movement;

Whereas the elections scheduled to be held on February 20, 2004, in Iran are fatally flawed;

Whereas the Council of Guardians has barred candidates solely for failing to demonstrate blind loyalty to Supreme Leader Ayatollah Khamenei;

Whereas the brave efforts of the people of Iran to promote greater democracy and respect for human rights are being thwarted by the actions of the Council of Guardians;

Whereas the blatant interference of the Council of Guardians in the electoral process ensures that the elections scheduled for February 20, 2004, will be neither free nor fair; and

Whereas the circumstances in Iran clearly demonstrate that authentic pro-democratic reform within the regime of Iran is not possible: Now, therefore, be it

Resolved, That it is the sense of the Senate that—

(1) the United States should not legitimize or support the elections in Iran scheduled to take place on February 20, 2004, as such elections stifle the growth of the genuine democratic forces in Iran and do not serve the national security interest of the United States;

(2) the support provided by the United States to Iran should be provided to the people of Iran, and not to any political figure who supports the preservation of the current regime; and

(3) the policy of the United States should be to seek a genuine democratic government in Iran that will restore freedom to the people of Iran, will abandon terrorism, will protect human rights, and will live in peace and security with the international community.

SENATE RESOLUTION 303—COMMENDING THE CARROLL COLLEGE FIGHTING SAINTS FOOTBALL TEAM FOR WINNING THE 2003 NATIONAL ASSOCIATION OF INTERCOLLEGIATE ATHLETICS (NAIA) NATIONAL FOOTBALL CHAMPIONSHIP GAME

Mr. BURNS (for himself and Mr. BAUCUS) submitted the following resolution; which was considered and agreed to:

S. RES. 303

Whereas the Carroll College Fighting Saints football team won the 2003 NAIA national championship game and its second straight national championship by defeating the Northwestern Oklahoma State University Rangers by a score of 41 to 28 at the Jim Carroll Stadium in Savannah, Tennessee, on December 20, 2003;

Whereas the Fighting Saints won 15 straight games, going undefeated in the 2003 regular season to win the Frontier Conference Championship and progressing through 4 rounds of playoffs;

Whereas head coach Mike Van Diest led the Fighting Saints to their second straight championship in his fifth season as head coach and was 1 of 5 coaches to receive the American Football Coaches Association Coach of the Year award;

Whereas Fighting Saints quarterback Tyler Emmert was named NAIA Player of the Year and offensive MVP for the championship game;

Whereas wide receiver Mark Gallik was named NAIA Football.net Offensive Player of the Year;

Whereas both Emmert and Gallik were named to the NAIA First Team All-American;

Whereas 2 players were named to the NAIA Second Team All-American—Spencer Schmitz and Marcus Atkinson—and 4 players received NAIA Honorable Mention All-American honors—Regan Mack, Rhett Crites, Nate Chiovaro, and Brett Bermingham;

Whereas 7 Fighting Saints were named as NAIA All-America Scholar Athletes—Kyle Baker, D.J. Dearcorn, Tyler Emmert, Kevin McCutcheon, Matt Peterson, A.J. Porrini, and Zach Zawacki; and

Whereas the Carroll College community, including the Carroll College Athletic Department, students, administration, board of trustees, faculty, and alumni, the city of Helena, and the entire State of Montana, are to be congratulated for their continuous support of the Carroll College football team: Now, therefore, be it

Resolved, That the Senate—

(1) commends the Carroll College Fighting Saints football team for winning the 2003 NAIA national championship;

(2) recognizes the achievements of all the players, coaches, support staff, and fans who were instrumental in helping Carroll College during the 2003 season; and

(3) directs the Secretary of the Senate to transmit a copy of this resolution to the president of Carroll College.

SENATE RESOLUTION 304—EXPRESSING THE SENSE OF THE SENATE THAT THE UNITED STATES SHOULD NOT SUPPORT THE FEBRUARY 20, 2004, ELECTIONS IN IRAN AND THAT THE UNITED STATES SHOULD ADVOCATE DEMOCRATIC GOVERNMENT IN IRAN THAT WILL RESTORE FREEDOM TO THE IRANIAN PEOPLE AND WILL ABANDON TERRORISM

Mr. BROWNBACK (for himself, Mr. LEAHY, Mr. BIDEN, and Mr. DASCHLE) submitted the following resolution; which was considered and agreed to:

S. RES. 304

Whereas there is a long history of mutual affection, appreciation, and respect between the people of the United States and the people of Iran, including the incalculable efforts by the United States in providing humanitarian, financial, and technological assistance to help the people of Iran;

Whereas the people of Iran have shown support for decency and freedom, and solidarity with the United States, including the demonstration of such support through candlelight vigils attended by the youth of Iran in the wake of the September 11, 2001, attacks upon the United States;

Whereas the Council of Guardians is a 12-member unelected body, that has arbitrarily disqualified thousands of candidates, including sitting Members of the Parliament of Iran and members of the reformist movement;

Whereas the elections scheduled to be held on February 20, 2004, in Iran are fatally flawed;

Whereas the brave efforts of the people of Iran to promote greater democracy and respect for human rights are being thwarted by the actions of the Council of Guardians;

Whereas the blatant interference of the Council of Guardians in the electoral process