of the Social Security Act to provide States with the option to cover certain legal immigrants under the medicaid and State children's health insurance programs.

S. 1123

At the request of Mr. LEVIN, the name of the Senator from Michigan (Ms. STABENOW) was added as a cosponsor of S. 1123, a bill to suspend temporarily the duty on certain microphones used in automotive interiors.

S. 1160

At the request of Mr. SMITH, the name of the Senator from New York (Mr. SCHUMER) was added as a cosponsor of S. 1160, a bill to amend the Internal Revenue Code of 1986 to restore, increase, and make permanent the exclusion from gross income for amounts received under qualified group legal services plan.

S.J. RES. 12

At the request of Mr. HATCH, the name of the Senator from Alaska (Ms. MURKOWSKI) was added as a cosponsor of S.J. Res. 12, a joint resolution proposing an amendment to the Constitution of the United States authorizing Congress to prohibit the physical desecration of the flag of the United States.

S. CON. RES. 16

At the request of Mr. BINGAMAN, the names of the Senator from Michigan (Ms. STABENOW) and the Senator from Alaska (Ms. MURKOWSKI) were added as cosponsors of S. Con. Res. 16, a concurrent resolution conveying the sympathy of Congress to the families of the young women murdered in the State of Chihuahua, Mexico, and encouraging increased United States involvement in bringing an end to these crimes.

S. CON. RES. 24

At the request of Mr. GRAHAM, the name of the Senator from Colorado (Mr. ALLARD) was added as a cosponsor of S. Con. Res. 24, a concurrent resolution expressing the grave concern of Congress regarding the recent passage of the anti-secession law by the National People's Congress of the People's Republic of China.

S. RES. 39

At the request of Ms. LANDRIEU, the names of the Senator from West Virginia (Mr. BYRD), the Senator from Oklahoma (Mr. COBURN), the Senator from Minnesota (Mr. COLEMAN), the Senator from Idaho (Mr. CRAIG), the Senator from Maryland (Ms. MIKULSKI) and the Senator from Washington (Mrs. MURRAY) were added as cosponsors of S. Res. 39, a resolution apologizing to the victims of lynching and the descendants of those victims for the failure of the Senate to enact anti-lynching legislation.

S. RES. 42

At the request of Mr. LUGAR, the name of the Senator from Ohio (Mr. DEWINE) was added as a cosponsor of S. Res. 42, a resolution expressing the sense of the Senate on promoting initiatives to develop an HIV vaccine.

S. RES. 134

At the request of Mr. SMITH, the names of the Senator from Michigan (Mr. LEVIN) and the Senator from Massachusetts (Mr. KENNEDY) were added as cosponsors of S. Res. 134, a resolution expressing the sense of the Senate regarding the massacre at Srebrenica in July 1995.

S. RES. 155

At the request of Mr. BIDEN, the names of the Senator from New Mexico (Mr. BINGAMAN), the Senator from Colorado (Mr. SALAZAR), the Senator from Washington (Ms. CANTWELL), the Senator from Delaware (Mr. CARPER) and the Senator from North Dakota (Mr. DORGAN) were added as cosponsors of S. Res. 155, a resolution designating the week of November 6 through November 12, 2005, as ''National Veterans Awareness Week'' to emphasize the need to develop educational programs regarding the contributions of veterans to the country.

STATEMENTS ON INTRODUCED BILLS AND JOINT RESOLUTIONS

By Mr. DEMINT:

S. 1173. A bill to amend the National Labor Relations Act to ensure the right of employees to a secret-ballot election conducted by the National Labor Relations Board; to the Committee on Health, Education, Labor, and Pensions.

Mr. DEMINT. Mr. President, today I introduce the Secret Ballot Protection Act, a measure that would amend the National Labor Relations Act, NLRA, to ensure the right of employees to a secret ballot election conducted by the National Labor Relations Board, NLRB, when deciding whether to be represented by a labor organization.

The legislation would prohibit a union from being recognized based on a ''card check'' campaign. Under a card check system, a union gathers authorization cards purportedly signed by workers expressing their desire for the union to represent them. By their very nature, card checks strip employees of the right to choose freely, safely, and anonymously, whether to unionize and leave them open to harassment, intimidation, and union pressure.

The bill also addresses the increasing pressure faced by employers from union bosses to recognize unions based on a card check campaign and forego the customary secret ballot election supervised by the National Labor Relations Board, NLRB, which gives workers the ability to vote their conscience without fear of reprisal.

Under current law, employers may voluntarily recognize unions based on these card checks, but are not required to do so. However, threats, boycotts, and other forms of public pressure are increasingly being used to force employers to recognize unions based on a card-check rather than the customary secret ballot election. The need for legislation to protect workers' rights could not be more clear.

It is no secret that hostile campaigns against American businesses to discredit employers have become a key organizing tactic used by union bosses across the country. These and other pressure tactics are often designed to hurt employers, their workers, and the economy, unless the demands of union leaders are met. It is wrong that union bosses are using these types of tactics at the expense of secret ballot elections, depriving rank-and-file workers of the ability to freely vote their conscience without fear of retaliation.

The Secret Ballot Protection Act will preserve the integrity of workers' freedom of choice and the right to a secret ballot election; it will protect workers from fear, threats, misinformation, and coercion by a union or coworkers to sign union authorization cards; and it will eliminate a union's ability to coercively terrorize an employer into recognition under duress. These fundamental protections can be achieved by simply requiring unions to win a majority of worker support in an anonymous, secret ballot election which eliminates the shroud of union intimidation tactics.

Supporting the right to a private vote and outlawing the corrupt card check practice of allowing union thugs to bully, harass, and scare workers who object to union membership is absolutely critical to democracy and freedom of choice.

Secret ballots are an absolutely essential ingredient for any functioning democratic system. The lack of secret ballot elections is how oppressive regimes manage to stay in power without majority support. Repelling such oppression hinges on the ability to walk into a voting booth, pull the curtain, and vote for anyone or anything we please with confidence the vote will be counted but never revealed to anyone who could use the knowledge to retaliate.

Evidence clearly demonstrates that secret ballot elections are more accurate indicators than card checks of whether employees actually wish to be recognized by a union. Numerous court decisions echo this fact. For example, in the case NLRB v. S.S. Logan Packing Co., the court said:

> It would be difficult to imagine a more unreliable method of ascertaining the real wishes of employees than a card check, unless it were an employer's request for an open show of hands. The one is no more reliable than the other.

There is no question that card checks leave employees open to harassment, intimidation, and union pressure. Workers' democratic rights should be protected, and the Secret Ballot Protection Act will make sure that happens by preserving the secret ballot election process. This important measure would guarantee workers the right to an anonymous, secret ballot election conducted by the NLRB and eliminate the use of intimidation and threats by organizers to coerce workers into joining a union.

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. 1173

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 ''Secret Ballot Protection Act of 2005''.

SEC. 2. FINDINGS.

Congress makes the following findings:

(1) The right of employees under the National Labor Relations Act (29 U.S.C. 151 et seq.) to choose whether to be represented by a labor organization by way of secret ballot election conducted by the National Labor Relations Board is among the most important protections afforded under Federal labor law.

(2) The right of employees to choose by secret ballot is the only method that ensures a choice free of coercion, intimidation, irregularity, or illegality.

(3) The recognition of a labor organization by using a private agreement, rather than a secret ballot election overseen by the National Labor Relations Board, threatens the freedom of employees to choose whether to be represented by a labor organization, and severely limits the ability of the National Labor Relations Board to ensure the protection of workers.

SEC. 3. NATIONAL LABOR RELATIONS ACT.

(a) RECOGNITION OF REPRESENTATIVE.—

(1) IN GENERAL.—Section 8(a)(2) of the National Labor Relations Act (29 U.S.C. 158(a)(2)) is amended by inserting before the colon the following: ''or to recognize or bargain collectively with a labor organization that has not been selected by a majority of such employees in a secret ballot election conducted by the National Labor Relations Board in accordance with section 9''.

(2) APPLICATION.—The amendment made by paragraph (1) shall not apply to collective bargaining relationships in which a labor organization with majority support was lawfully recognized prior to the date of enactment of this Act.

(b) ELECTION REQUIRED.—

(1) IN GENERAL.—Section 8(b) of the National Labor Relations Act (29 U.S.C. 158(b)) is amended—

(A) in paragraph (6), by striking ''and'' at the end;

(B) in paragraph (7), by striking the period at the end and inserting ''; and''; and

(C) by adding at the end the following:

''(8) to cause or attempt to cause an employer to recognize or bargain collectively with a representative of a labor organization that has not been selected by a majority of such employees in a secret ballot election conducted by the National Labor Relations Board in accordance with section 9.''.

(2) APPLICATION.—The amendment made by paragraph (1) shall not apply to collective bargaining relationships that were recognized prior to the date of enactment of this Act.

(c) SECRET BALLOT ELECTION.—Section 9(a) of the National Labor Relations Act (29 U.S.C. 159(a)), is amended—

(1) by striking ''Representatives'' and inserting ''(1) Representatives'';

(2) by inserting after ''designated or selected'' the following: ''by a secret ballot election conducted by the National Labor Relations Board in accordance with this section''; and

(3) by adding at the end the following:

''(b) The secret ballot election requirement under paragraph (1) shall not apply to collective bargaining relationships that were recognized before the date of the enactment of the Secret Ballot Protection Act of 2005.''.

SEC. 4. REGULATIONS.

Not later than 6 months after the date of the enactment of this Act, the National Labor Relations Board shall review and revise all regulations promulgated prior to such date of enactment to implement the amendments made by this Act.

By Mr. AKAKA:

S. 1176. A bill to improve the provision of health care and services to veterans in Hawaii, and for other purposes; to the Committee on Veterans' Affairs.

Mr. AKAKA. Mr. President, I rise today to introduce the ''Neighbor Islands Veterans Health Care Improvements Act.'' My State of Hawaii is home to 115,000 veterans, nearly 18,000 of whom avail themselves of VA health care. Unfortunately, the level of care provided to those living on Oahu and the Neighbor Islands—Kauai, Molokai, Lanai, Maui, and the Big Island—is not at the optimal level. My legislation would significantly improve the level of care the veterans residing in Hawaii have so bravely earned.

Hawaii is undoubtedly an exceptional place to make one's home, and its population continues to grow each year. As such, the number of veterans seeking VA health care has grown. However, the level of services provided to Hawaii's veterans has failed to keep pace. Additionally, each day more veterans are returning home to Hawaii from the Global War on Terror, including Operations Enduring and Iraqi Freedom. It is critical that these brave men and women receive adequate care. It is equally critical that today's veterans receive needed long-term care and mental health care.

My bill would ensure that care and facilities are optimized, that the burden of VA personnel is diminished, and that veterans throughout the state receive specialized care. Specifically, my legislation calls for new Community Based Outpatient Clinics and Vet Centers in areas that desperately need additional health care facilities, as well as expanding services at those already in existence. Satellite clinics providing both medical care and mental health counseling would be opened on the islands of Molokai and Lanai, which currently lack VA facilities. Staff levels at existing clinics and Vet Centers would be increased to compensate for these new clinics and to provide needed community-based long-term care, such as home care. My legislation also authorizes the construction of a $10 million mental health center on the grounds of Tripler Army Medical Center, which will include an inpatient Post-Traumatic Stress Disorder residential treatment program.

That our veterans receive the long-term care to which they are entitled is of major concern to me. In fact, the Committee on Veterans' Affairs, of which I am Ranking Member, held a hearing on the potential demand for long-term care just this May. I would like to point out that the VA Center for Aging in Honolulu—the only VA nursing home in the State—has a mere 60 beds. This is nowhere near sufficient to care for the number of veterans who reside there. Furthermore, community nursing home beds are limited. Given the dearth of nursing home beds, both VA and community, the Neighbor Islands Veterans Health Care Improvements Act authorizes a medical care foster program on the Island of Oahu. Modeled on the successful Medical Care Foster Program at the Central Arkansas Veterans Health Care System, such a system places veterans in a permanent foster home, allowing them to remain in the community while receiving the care they need.

Because I believe specialized care, such as orthopedics and opthamology, are limited on the neighbor islands, the bill directs that VA fully study the provision of such care. VA would then be required to make a formal determination as to the adequacy of specialized care. I may seek to direct improvements in this area at a later date.

This bill is vital to those veterans residing in Hawaii. Though they may live far from the other veterans on the mainland, they are just as entitled to quality health care.

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:

(The bill will be printed in a future edition of the RECORD.)

By Mr. AKAKA:

S. 1177. A bill to improve mental health services at all facilities of the Department of Veterans Affairs; to the Committee on Veterans' Affairs.

Mr. AKAKA. Mr. President, I rise proudly today to introduce legislation that would enhance the Department of Veterans Affairs' (VA) ability to provide mental health and other specialized services to its patients. At a time when our Nation is at war, it is imperative that we ensure that all veterans have access to top quality mental health care, whether they visit a VA hospital or clinic.

At the time of its creation, the VA health care system was tasked with meeting the special needs of its veteran patients. Those veterans who suffered from spinal cord injuries, amputations, blindness, Post-Traumatic Stress Disorder, substance abuse, and homelessness required unique forms of treatment and rehabilitation. During the past few decades, VA has emerged as the industry leader in providing specialized services to these types of patients. Much of VA's expertise in these areas remains unparalleled in the larger health care community—particularly with regard to mental health care.

However, it is with great dismay that I rise today, as VA's specialized programs are in jeopardy due to budget constraints. Increased demand and flatline budget increases over the past

few years have literally starved the system. Sadly, this problem is not a new one. Back in 1996, Congress recognized the merits of these specialized programs and that they could be vulnerable to cuts because of their smaller scale. As such, we enacted legislation that required VA to retain its capacity to provide specialized services at the levels in place at the time of the bill's passage in 1996, and to annually report as to the status of its compliance with this requirement.

Despite this effort by Congress and the actions of my predecessors on this Committee to subsequently strengthen the original legislation to protect VA's specialized services, VA continues to underfund and cut back resources for these vital programs. Additionally, VA has employed measures such as counting dollars according to 1996 levels to appear as if they are in compliance. In the area of mental health care, this has been especially true. My proposed legislation amends the statute to ensure that capacity funding levels are adjusted for inflation. We need to be talking about real dollars—not 1996 dollars—to get a true sense of VA's capacity to care for veterans with mental health needs.

This legislation would also mandate that VA carry out a number of measures designed to improve mental health and substance abuse treatment capacity at Community-Based Outpatient Clinics and throughout the VA system. Currently, many clinics do not even provide mental health services at all. My bill would ensure that at least 90 percent of all clinics can provide mental health services, either onsite or through referrals. Furthermore, it would establish more comprehensive performance measures to provide incentives for clinics to maintain mental health capacity, for primary care doctors to screen patients for mental illness, and require that every primary health care facility be able to provide at least five days of inpatient detoxification services.

Finally, the bill seeks to foster greater cooperation between VA and the Department of Defense (DoD) in treating servicemembers and subsequently veterans who suffer from some form of mental health or readjustment disorder. It has been estimated that anywhere from 20 to 30 percent of the men and women who are currently serving in Iraq and Afghanistan will require treatment for a mental health issue. The bill would direct the two Departments to agree upon standardized separation screening procedures for sexual trauma and mental health disorders, as well as establish a joint VA-DoD Workgroup to examine potential ways of combating stigma associated with mental illness, educate servicemembers' families, and make VA's expertise in the field of mental health more readily available to DoD providers.

We still have much work to do in the area of mental illness associated with service in the armed forces. But this bill is a step in the right direction. I ask my colleagues for their support of this bill, for it not only seeks to combat disorders that can be very debilitating, but it also would protect specialized services that are at the heart of VA's mission.

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. 1177

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 ''Veterans Mental Health Care Capacity Enhancement Act of 2005''.

SEC. 2. FINDINGS.

Congress makes the following findings:

(1) Mental health treatment capacity at community-based outpatient clinics remains inadequate and inconsistent, despite the requirement under section 1706(c) of title 38, United States Code, that every primary care health care facility of the Department of Veterans Affairs develop and carry out a plan to meet the mental health care needs of veterans who require such services.

(2) In 2001, the minority staff of the Committee on Veterans' Affairs of the Senate conducted a survey of community-based outpatient clinics and found that there was no established systemwide baseline of acceptable mental health service levels at such clinics.

(3) In 2004, the Department of Veterans Affairs workgroup on mental health care, which developed and submitted a Comprehensive Mental Health Strategic Plan to the Secretary of Veterans Affairs, found service and funding gaps within the Department of Veterans Affairs health care system, and made numerous recommendations for improvements. As of May 2005, Congress had not received a final report on the workgroup's findings.

(4) In February 2005, the Government Accountability Office reported that the Department of Veterans Affairs had not fully met any of the 24 clinical care and education recommendations made in 2004 by the Special Committee on Post-Traumatic Stress Disorder of the Under Secretary for Health, Veterans Health Administration.

SEC. 3. REQUIRED CAPACITY FOR COMMUNITY-BASED OUTPATIENT CLINICS.

(a) STRENGTHENING OF PERFORMANCE MEASURES FOR MENTAL HEALTH PROGRAMS.—Section 1706(b)(6) of title 38, United States Code, is amended by adding at the end the following:

''(D) The Under Secretary shall include, as goals in the performance contracts entered into with Network Directors to prioritize mental health services—

''(i) establishing appropriate staff-patient ratio levels for various programs (including mental health services at community-based outpatient clinics);

''(ii) fostering collaborative environments for providers; and

''(iii) encouraging clinicians to conduct mental health consultations during primary care visits.''.

(b) INFLATIONARY INDEXING OF CAPACITY REQUIREMENTS.—Section 1706(b) of title 38, United States Code, is amended by adding at the end the following:

''(7) For the purposes of meeting and reporting on the capacity requirements under paragraph (1), the Secretary shall ensure that the funding levels allocated for specialized treatment and rehabilitative services for disabled veterans are adjusted for inflation each fiscal year.''.

(c) MENTAL HEALTH AND SUBSTANCE ABUSE SERVICES.—Section 1706(c) of title 38, United States Code, is amended—

(1) by inserting ''(1)'' before ''The Secretary''; and

(2) by adding at the end the following:

''(2) The Secretary shall ensure that not less than 90 percent of community-based outpatient clinics have the capacity to provide onsite, contract-referral, or tele-mental health services—

''(A) for at least 10 percent of all clinic visits by not later than September 30, 2006; and

''(B) for at least 15 percent of all clinic visits by not later than September 30, 2007.

''(3) The Secretary shall ensure that not less than 2 years after the date of enactment of this paragraph—

''(A) each primary care health care facility of the Department has the capacity and resources to provide not less than 5 days of inpatient, residential detoxification services onsite or at a nearby contracted or Department facility; and

''(B) a case manager is assigned to coordinate follow up outpatient services at each community-based outpatient clinic.''.

(d) REPORTING REQUIREMENT.—Not later than January 31, 2008, the Secretary of Veterans Affairs shall submit a report to Congress that—

(1) describes the status and availability of mental health services at community-based outpatient clinics;

(2) describes the substance of services available at such clinics;

(3) includes the ratios between mental health staff and patients at such clinics; and

(4) includes the certification of the Inspector General of the Department of Veterans Affairs.

SEC. 4. COOPERATION ON MENTAL HEALTH AWARENESS AND PREVENTION.

(a) AGREEMENT.—The Secretary of Defense and the Secretary of Veterans Affairs shall enter into a Memorandum of Understanding—

(1) to ensure that separating servicemembers receive standardized individual mental health and sexual trauma assessments as part of separation exams; and

(2) includes the development of shared guidelines on how to conduct the assessments.

(b) ESTABLISHMENT OF JOINT VA–DOD WORKGROUP ON MENTAL HEALTH.—

(1) IN GENERAL.—Not later than 180 days after the date of enactment of this Act, the Secretary of Defense and the Secretary of Veterans Affairs shall establish a joint workgroup on mental health, which shall be comprised of not less than 7 leaders in the field of mental health appointed from their respective departments.

(2) STUDY.—Not later than 1 year after the establishment of the workgroup under paragraph (1), the workgroup shall analyze the feasibility, content, and scope of initiatives related to—

(A) combating stigmas and prejudices associated with servicemembers who suffer from mental health disorders or readjustment issues, through the use of peer counseling programs or other educational initiatives;

(B) ways in which the Department of Veterans Affairs can make their expertise in treating mental health disorders more readily available to Department of Defense mental health care providers;

(C) family and spousal education to assist family members of veterans and servicemembers to recognize and deal with signs of potential readjustment issues or other mental health disorders; and

(D) seamless transition of servicemembers who have been diagnosed with mental health disorders from active duty to veteran status (in consultation with the Seamless Transition Task Force and other entities assisting in this effort).

(3) REPORT.—Not later than June 30, 2007, the Secretary of Defense and the Secretary of Veterans Affairs shall submit a report to Congress containing the findings and recommendations of the workgroup established under this subsection.

SEC. 5. PRIMARY CARE CONSULTATIONS FOR MENTAL HEALTH.

(a) GUIDELINES.—The Under Secretary for Health, Veterans Health Administration, shall establish systemwide guidelines for screening primary care patients for mental health disorders and illnesses.

(b) TRAINING.—Based upon the guidelines established under subsection (a), the Under Secretary for Health, Veterans Health Administration, shall conduct appropriate training for clinicians of the Department of Veterans Affairs to carry out mental health consultations.

By Mr. OBAMA:

S. 1180. A bill to amend title 38, United States Code, to reauthorize various programs servicing the needs of homeless veterans for fiscal years 2007 through 2011, and for other purposes; to the Committee on Veterans' Affairs.

Mr. OBAMA. Mr. President, the Department of Veterans Affairs estimates that on any given day, as many as 200,000 veterans are homeless. That is 200,000 men and women who have fought for this country who will go without the comfort of knowing that they will have a roof over their head and a place to call home.

If 200,000 of our Nation's veterans will go homeless tonight, the VA estimates that about twice as many veterans will experience homelessness this year. Again, that is 400,000 men and women who defended this great Nation, who will be left out on the streets at some point this year.

I hope my colleagues are as distressed as I am by these numbers, and I hope my colleagues will join me in supporting the bill I introduce today—the Shelter All Veterans Everywhere or ''SAVE'' Reauthorization Act of 2005.

This bill reauthorizes many of the soon-to-expire homeless veterans programs currently serving this needy population, including the Homeless Providers Grant and Per Diem Program and the Homeless Veterans Reintegration Program. These programs work to provide much-needed services to homeless veterans so that they can find jobs and ultimately find a stable home. These programs deserve to be continued. The SAVE Reauthorization Act actually expands the reach of the Homeless Veterans Reintegration Program, which provides job placement and training assistance, to include those veterans at risk of homelessness as well as those actually homeless, so that we can work to prevent homelessness before it happens.

At a time when so many of my colleagues are working to ensure that our Nation's veterans receive the benefits and services they have earned and deserve, we cannot forget the neediest of our veterans—the homeless veterans. I hope my colleagues will join me in supporting these worthy programs.

Mr. CORNYN (for himself, Mr. LEAHY, Mr. FEINGOLD, and Mr. ALEXANDER):

S. 1181. A bill to ensure an open and deliberate process in Congress by providing that any future legislation to establish a new exemption to section 552 of title 5, United States Code (commonly referred to as the Freedom of Information Act) be stated explicitly within the text of the bill; to the Committee on the Judiciary.

Mr. CORNYN. Mr. President, on February 16, shortly before the President's Day recess, the Senator from Vermont and I introduced the OPEN Government Act of 2005 (S. 394)—bipartisan legislation to promote accountability, accessibility, and openness in government, principally by strengthening and enhancing the Federal law commonly known as the Freedom of Information Act. s

When I served as Attorney General of Texas, it was my responsibility to enforce Texas's open government laws. I am pleased to report that Texas is known for having one of the strongest sets of open government laws in our Nation. And since that experience, I have long believed that our Federal Government could use ''a little Texas sunshine.'' I am thus especially enthusiastic about the OPEN Government Act, because that legislation attempts to incorporate some of the most important principles and elements of Texas law into the Federal Freedom of Information Act. And I am gratified that Senators ALEXANDER, FEINGOLD, ISAKSON, and NELSON of Nebraska are cosponsors of the bipartisan Cornyn-Leahy bill.

This legislation enjoys broad support across the ideological spectrum. Indeed, since its introduction on February 16, the legislation has attracted additional support. In particular, I am pleased to report the endorsements of three conservative public interest groups—one devoted to the defense of property rights, Defenders of Property Rights, led by Nancie G. Marzulla, one devoted to the issue of racial preferences in affirmative action programs, One Nation Indivisible, led by Linda Chavez, and one devoted to the protection of religious liberty, Liberty Legal Institute, led by Kelly Shackelford. I ask unanimous consent that their endorsement letters be printed in the RECORD at the close of my remarks. The point of including these letters in the RECORD, of course, is not that these groups are right or wrong in the pursuit of their respective causes, but that the cause of open government is neither a Republican nor a Democrat issue—neither a conservative nor a liberal issue—rather, it is an American issue.

I would like to take a few moments to emphasize one particular provision of the Cornyn-Leahy bill—section 8. It is a common sense provision. This provision should not be at all controversial, and indeed, I am not aware of any opposition whatsoever to it. The provision would simply help to ensure an open and deliberate process in Congress, by providing that any future legislation to establish a new exemption to the Federal Freedom of Information Act must be stated explicitly within the text of the bill. Specifically, any future attempt to create a new so-called ''(b)(3) exemption'' to the Federal FOIA law must specifically cite section (b)(3) of FOIA if it is to take effect. The justification for this provision is simple: Congress should not establish new secrecy provisions through secret means. If Congress is to establish a new exemption to FOIA, it should do so in the open and in the light of day.

A recent news report published by the Cox News Service amply demonstrates the importance of this issue, and specifically emphasizes the need for section 8 of the Cornyn-Leahy bill. I ask unanimous consent that a copy of this news report be printed at the close of my remarks.

Senator LEAHY and I firmly believe that all of the provisions of the OPEN Government Act are important—and that, as the recent Cox News Service report demonstrates, section 8 in particular is a worthy provision that can and should be quickly enacted into law. We note that July 4 is the anniversary of the 1966 enactment of the original Federal Freedom of Information Act. Accordingly, we plan to devote our efforts this month to getting section 8 approved by Congress and submitted to the President for his signature by that anniversary date.

Toward that end, we rise today to introduce separate legislation to enact section 8 of the OPEN Government Act into law. We ask our colleagues in this chamber to support this measure, first in the Senate Judiciary Committee, and then on the floor of the United States Senate. And we look forward to working with our colleagues in the House—including Representative LAMAR SMITH, the lead sponsor of the OPEN Government Act in the House, H.R. 867, as well as Chairman TOM DAVIS, who leads the House Committee on Government Reform, and Chairman TODD PLATTS, who leads the House Government Reform subcommittee that recently held a hearing to review the Federal FOIA law.

Section 8 of the Cornyn-Leahy bill is a common-sense, uncontroversial provision that deserves the support of every member of Congress. It simply provides that, when Congress enacts legislation—specifically, legislation to exempt certain documents from disclosure under FOIA—it do so in the open. After all, if documents are to be kept secret by an act of Congress, we should at least make sure that that very act of Congress itself not be undertaken in secret.

A Senate Judiciary subcommittee held a hearing on the OPEN Government Act on March 15. I hope that at least section 8 of the legislation can be enacted into law quickly, and that Congress will then move to consider the other important provisions of the bill.

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

MAY 25, 2005.

Hon. JOHN CORNYN,
Hart Senate Office Building,
Washington, DC.

DEAR SENATOR CORNYN: On behalf of the Defenders of Property Rights, I would like to commend you on your introduction of the Openness Promotes Effectiveness in our National Government Act of 2005 (OPEN Government Act). With this legislation, Americans can have confidence that their government is operating honestly and efficiently.

This proposed bill would be invaluable in aiding our quest to protect the private property rights of all Americans. The bill is beneficial for property rights plaintiffs—it puts teeth into the requirement that the government timely respond to requests while still protecting private property rights. For instance, under the bill, if an agency does not respond within the required 20 days, the agency may not assert any exemption under subsection (b) of the bill unless disclosure would endanger national security, ''disclose personal private information protected by section 552a or proprietary information,'' or would otherwise be prohibited by law. The bill also provides for better review of agencies' responses to FOIA requests and for disciplinary actions for arbitrary and capricious rejections of requests. If passed, this bill would surely help private property owners obtain faster access to information regarding actions that have taken their property—and provide better enforcement if they do not.

Your bill has our full and enthusiastic endorsement. We thank you for your steadfast commitment to liberty, open government, and constitutionally guaranteed property rights.

Yours truly,

NANCIE G. MARZULLA,
President.

ONE NATION INDIVISIBLE,
May 19, 2005.

Senator JOHN CORNYN,
U.S. Senate,
Washington, DC.

DEAR SENATOR CORNYN: I am writing to tell you that One Nation Indivisible supports the OPEN Government Act of 2005. Good luck with its passage.

Sincerely,

Linda Chavez.

LIBERTY LEGAL INSTITUTE,
June 1, 2005.

Re: ''OPEN Government Act'' bill

Hon. JOHN CORNYN,
U.S. Senate, Washington, DC.

DEAR SENATOR CORNYN: We are fully on board with your efforts on Freedom of Information Act improvements. The government should be open to its people. This is a core requirement in any free society.

FOIA currently has little enforcement capability and was also hurt by the wrongly decided Buckhannon decision. Citizens deserve the protection of FOIA and the changes you are proposing.

Please put us on your endorsement list for the ''OPEN Government Act'' bill. In fact, we strongly believe the Buckhannon error needs to be corrected for all §1983 cases.

Last, even more abusive recently is the abuse of Rule 68 to threaten and intimidate citizens already victimized once by government officials. The idea that civil rights victims, who win their suit (usually for just nominal damages), may have to pay the government's costs is obscene and a complete violation of Congressional intent. I hope we can fix this as well.

Thank you for your service to all Texans.

Sincerely,

KELLY SHACKELFORD,
Chief Counsel, Liberty Legal Institute.

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

[From the Cox News Service, June 3, 2005]

CONGRESS CLOAKS MORE INFORMATION IN SECRECY

(By Rebecca Carr)

WASHINGTON.—Few would argue with the need for a national livestock identification system to help the federal government handle a disease outbreak such as mad cow.

But pending legislation calling for the nation's first electronic livestock tracking system would prohibit the public from finding out anything about animals in the system, including the history of a cow sick with bovine spongiform encephalopathy.

The only way the public can find out such details is if the secretary of agriculture makes the information public.

That's because the legislation, sponsored by Rep. Collin C. Peterson, D-Minn., includes a provision that exempts information about the system from being released under the Freedom of Information Act.

Formally called the ''third exemption,'' it is one of nine exemptions the government can use to deny the release of information requested under the FOI Act.

Open government advocates say it is the most troubling of the nine exemptions because it allows Congress to cloak vital information in secrecy through legislation, often without a public hearing or debate. They say Congress frequently invokes the exemption to appease private sector businesses, which argue it is necessary to protect proprietary information.

''It is an easy way to slap a secrecy stamp on the information,'' said Rick Blum, director of openthegovernment.org, a coalition of more than 30 groups concerned about government secrecy.

The legislative intent of Congress is far more difficult to challenge than a federal agency's denial for the release of information, said Kevin M. Goldberg, general counsel to the American Society of Newspaper Editors.

''This secrecy is often perpetuated in secret as most of the (third exemption) provisions consist of one or two paragraph tucked into a much larger bill with no notice that the Freedom of Information Act will be affected at all,'' Goldberg said.

There are at least 140 cases where congressional lawmakers have inserted such exemptions, according to a 2003 Justice Department report.

The report notes that Congress has been ''increasingly active in enacting such statutory provisions.''

The exemptions have become so popular that finding them in proposed legislation is ''like playing a game of Wackamole,'' one staffer to Sen. Patrick Leahy, D-Vt., joked. ''As soon as you handle one, another one pops up.''

Congress used the exemption in its massive Homeland Security Act three years ago, granting businesses protection from information disclosure if they agreed to share information about the vulnerabilities of their facilities.

And in another twist on the exemption, Congress inserted a provision into the Consolidated Appropriations Act of 2004 that states that ''no funds appropriated under this or any other act may be used to disclose'' records about firearms tracking to the public.

Government agencies have also sought protection from information disclosure.

For example, Congress passed an amendment to the National Security Act in 1984 that exempted the CIA from having to comply with the search and review requirements of the FOI Act for its ''operational files.''

Most of the information in those files, which included records about foreign and counterintelligence operations was already protected from disclosure under the other exemptions in the FOI Act.

But before Congress granted the exemption, the agency had to search and review each document to justify withholding the information, which cost time and money.

Open government advocates say many of the exemptions inserted into legislation are not justified.

''This is back door secrecy,'' said Thomas Blanton, executive director of the National Security Archive at George Washington University, a nonprofit research institute based in Washington.

When an industry wants to keep information secret, it seeks the so-called third exemption, he said.

''It all takes place behind the sausage grinder,'' Blanton said. ''You don't know what gristle is going through the sport, you just have to eat it.''

But Daniel J. Metcalfe, co-director of the Justice Department's Office of Information and Privacy, said the exception is crucial to the FOI Act's structure.

In the case of the animal identification bill, the exemption is critical to winning support from the cattle industry and on Capitol Hill.

''If we are going to develop an animal ID system that's effective and meaningful, we have to respect participants' private information,'' said Peterson, the Minnesota lawmaker who proposed the identification system. ''The goal of a national animal I.D. system is to protect livestock owners as well as the public.''

As the livestock industry sees it, it is providing information that will help protect the public health. In exchange for proprietary information about their herds, they believe they should receive confidence that their business records will not be shared with the public.

''The producers would be reluctant to support the bill without the protection,'' said Bryan Dierlam, executive director of government affairs at the National Cattleman's Beef Association.

The animal identification on bill provides the government with the information it needs to protect the public in the event of an disease out break, Dierlam said. ''But it would protect the producers from John Q. Public trying to willy-nilly access their information.''

Food safety experts agree there is a clear need for an animal identification system to protect the public, but they are not certain that the exemption to the FOI Act is necessary.

''It's sad that Congress feels they have to give away something to the cattle industry to achieve it,'' said Caroline Smith DeWaal, director of the food safety program at the Center for Science in the Public Interest, a nonprofit organization based in Washington.

Slipping the exemption into legislation without notice is another problem cited by open government advocates!.

It has become such a problem that the Senate's strongest FOI Act supporters, Sen.

John Cornyn, R-Texas, and Sen. Patrick Leahy, D-Vt., proposed that lawmakers be required to uniformly identify the exemption in all future bills.

''If Congress wants to create new exemptions, it must do so in the light of day,'' Cornyn said. ''And it must do so in a way that provides an opportunity to argue for or against the new exemption—rather than have new exemptions creep into the law unnoticed.''

Leahy agreed, saying that Congress must be diligent in reviewing new exemptions to prevent possible abuses.

''In Washington, loopholes tend to beget more loopholes, and it's the same with FOI Act exemptions,'' Leahy said. ''Focusing more sunshine on this process is an antidote to exemption creep.''

Mr. LEAHY. For the third time this year, Senator CORNYN and I have joined to introduce common sense proposals to strengthen open government and the Freedom of Information Act, or FOIA. The Senator from Texas has a long record of promoting open government, most significantly during his tenure as Attorney General of Texas. He and I have forged a valuable partnership in this Congress to support and strengthen FOIA. We introduced two bills earlier this year, and held a hearing on our bill, the Open Government Act, issues during Sunshine Week in March.

The bill we introduce today is simple and straightforward. It simply requires that when Congress sees fit to provide a statutory exemption to FOIA, it must state its intention to do so explicitly. The language of this bill was previously introduced as section eight of S. 394, the Open Government Act.

No one argues with the notion that some government information is appropriately kept from public view. FOIA contains a number of exemptions for national security, law enforcement, confidential business information, personal privacy, and other matters. One provision of FOIA, commonly known as the (b)(3) exemption, states that records that are specifically exempted by statute may be withheld from disclosure. Many bills that are introduced contain statutory exemptions, or contain language that is ambiguous and might be interpreted as such by the courts. In recent years, we have seen more and more such exemptions offered in legislation. A 2003 Justice Department report stated that Congress has been ''increasingly active in enacting such statutory provisions.'' A June 3, 2005, article by the Cox News Service titled, ''Congress Cloaks More Information in Secrecy,'' pointed to 140 instances ''where congressional lawmakers have inserted such exemptions'' into proposed legislation. I commend this article to my colleagues and understand that Senator CORNYN has placed a copy in the RECORD.

Our shared principles of open government lead us to believe that individual statutory exemptions should be vigorously debated before lawmakers vote in favor of them. Sometimes such proposed exemptions are clearly delineated in proposed legislation, but other times they amount to a few lines within a highly complex and lengthy bill. These are difficult to locate and analyze in a timely manner, even for those of us who stand watch. As a result, such exemptions are often enacted with little scrutiny, and as soon as one is granted, others are requested.

The private sector has sought many exemptions in exchange for agreeing to share information with the government. One example of great concern to me is the statutory exemption for critical infrastructure information that was enacted as part of the Homeland Security Act of 2002, the law that created the Department of Homeland Security. In this case, a reasonable compromise, approved by the White House, to balance the protection of sensitive information with the public's right to know was pulled out of the bill in conference. It was then replaced with text providing an overly broad statutory exemption that undermines Federal and State sunshine laws. I have introduced legislation, called the Restoration of Freedom of Information Act, to revert to that reasonable compromise language.

Not every statutory exemption is inappropriate, but every proposal deserves scrutiny. Congress must be diligent in reviewing new exemptions to prevent possible abuses. Focusing more sunshine on this process is an antidote to exemption creep.

When we introduced the Open Government Act in February, we addressed this matter with a provision that would require Congress to identify proposed statutory exemptions in newly introduced legislation in a uniform manner. Today, we introduce that single section as a new bill that we hope can be enacted quickly.

I want to thank the Senator from Texas for his personal dedication to these issues. I urge all members of the Senate to join us in supporting this bill.

By Mr. CRAIG:

S. 1182. A bill to amend title 38, United States Code, to improve health care for veterans, and for other purposes; to the Committee on Veterans' Affairs.

Mr. CRAIG. Mr. President, I seek recognition today to introduce legislation that will expand the services available to our Nation's veterans and their dependents, and improve the ability of the Department of Veterans Affairs (VA) to provide health care services to this same group of deserving Americans. I take a few moments now to explain the provisions of this legislation.

First, the bill would, in section 2, exempt veterans enrolled for VA care from all copayments for hospice care services provided by VA. Over the past several years, VA has greatly expanded its efforts to provide compassionate end-of-life care for our Nation's heroes. Last year, Congress made efforts to ensure that the surviving spouses and children would not receive bills for such services following the deaths of such veterans who were in the hospice program. Unfortunately, last year's legislation did not go far enough, and today some veterans' families are still paying for this care. This provision would end that practice in all hospice care settings.

Section 3 of the bill would exempt former Prisoners of War from copayments that are applicable to care in a VA extended care facility. Congress has already exempted this deserving group of veterans from other VA medical copayments, and this provision would complete the range of services available to these veterans free of charge. In addition, this section bill would remove the requirement that VA maintain the exact number of nursing home care beds in VA facilities as it had during fiscal year 1998. Now before some suggest that I am advocating the reduction in services available to veterans, I'd like to explain how the current requirement came about and why I believe it should be reconsidered.

The requirement that VA maintain a specified level of nursing home beds was inserted into the law in 1999 when Congress enacted legislation to expand options for non-institutional, long-term care services available to veterans. At that time, some felt that by growing the non-institutional care program, VA would seek simply to shut all of its institutional care capacity. So in a compromise, Congress decided that fiscal year 1998 would be the year against which changes in the institutional care program would be measured. And then it required that VA maintain all of the beds it had in 1998.

Since 1998, VA has increased the number of veterans it treats by nearly 2 million. Yet, year after year, VA reports to Congress that it does not need to maintain the number of nursing home beds required by law. Does that mean VA is closing beds unnecessarily? No. It means VA has followed the progress of medicine and is offering tens-of-thousands of veterans non-institutional care services while keeping them at home rather than in VA nursing home beds. I do not believe that Congress should continue to mandate the maintenance of an arbitrarily-determined number of beds in a system that is trying to effectively use every dollar it can to provide real and needed services to our veterans. This provision reflects that belief.

The fourth section of the legislation, if enacted, would ensure that veterans who seek emergency medical services at the nearby community medical facilities are treated no differently financially than if the care had been provided at a VA medical facility. This is an important issue in the provision of quality health care for our veterans. VA has some evidence that veterans who need emergency services are bypassing local medical facilities, and are attempting to ''make it'' to a VA facility even in the face of an emergency, because of concerns that VA's reimbursement policies for non-VA provided

emergency care will result in the veteran paying more out-of-pocket costs. Clearly, that is not the kind of behavior Congress wants to encourage in our veterans. Nor is it good medicine. This provision would clarify once and for all that veterans will be treated equally regardless of where emergency care treatment is sought.

Section 5 of the bill would authorize VA to provide or pay for up to the first fourteen days of care for a newborn child of an enrolled female veteran who delivers her baby under VA provided, or VA financed, care. As most of my colleagues know, VA provides what it calls a ''comprehensive package of health benefits for eligible veterans.'' Unfortunately, for the increasing number of female veterans enrolling for VA care, the word ''comprehensive'' does not include coverage for a newborn's first few days of needed care. This type of arrangement is common in the private sector. In my judgment, this is an issue we must address to assure our female service members that, as more and more of them join the service and change the face of the American military, we will make certain that the face of VA changes right along with it.

Section 6 would allow private health care providers to recoup costs for care provided to children afflicted with spina bifida of Vietnam veterans—children who are, by law, entitled to VA-provided care—when the costs are not fully covered by VA reimbursements. This so-called ''balance billing'' authority would prohibit charging individual patients or veterans themselves. Only a beneficiary with private insurance could have his or her insurance cover charges not covered by VA. This provision is important because it will provide a financial incentive to many providers who, unfortunately in some cases today, are not willing to provide the very specialized services needed by these children because some costs are not reimbursed by VA at a sufficient rate.

Section 7 of this bill would increase the authorized level of funding for the Homeless Grant and Per Diem Program at the Department of Veterans Affairs. I know all of my colleagues would agree that any man or woman who served this country in uniform should not be among the unfortunate Americans who find themselves on the street without shelter. VA has made tremendous strides in this area by providing grant programs, health care services, mental health treatment, and other assistance to those veterans who do find themselves on the street. This provision would ensure that good programs remain on track for the foreseeable future.

The eighth section of this bill would authorize VA medical centers to employ Marriage and Family Therapists. I realize that to some of my colleagues this may sound as though VA is beginning to become a family health care system and not a veterans' health care system. I want to assure any who harbor such concerns that this is not the intention or the purpose of this proposed authority. Rather, this proposal seeks to recognize that for some veterans, the trauma and experiences of war may lead to troubles at home. Often in these situations, treatment as a family is more effective for the betterment of the veteran. Of course, preservation of the family is an extremely important byproduct of this treatment approach as well. I do not believe it is incompatible with the mission of treating our veterans to focus on their family well-being when it is appropriate. The military is offering many of these services already to those who are returning from overseas. These programs are receiving good reviews from those in the mental health and counseling professions. It seems only logical that we extend successful ideas from the military experience to our veterans.

Section 9 would provide pay equity for the national Director of VA's Nursing Service. Currently, this position is paid at a rate that is less than all of the other service chiefs at VA's Central Office. I believe correcting this inequity is not only a matter of fairness, but a long overdue recognition that VA's nursing service is just as important to the provision of health services for our veterans as the pharmacy service, the dental service, and other such services within VA.

Section 10 of this bill would allow VA to conduct cost-comparison studies within its health care system. Mr. President, such studies are invaluable tools for government to measure whether its current workforce has identified the most efficient and effective means of delivering services to our veterans, and value to the taxpayers. In my opinion, any organization that fails to measure its performance against others in the same field will quickly cease to be an effective organization. VA is—and it must continue to be—an effective and efficient health care provider. This small change in the law will provide one additional tool to ensure that is the case far into the future.

Section 11 of my legislation would focus on an area of great importance to many members of the Senate: The treatment of mental health issues for those returning from service in Operations Iraqi Freedom and Enduring Freedom. I know many of us have read reports that estimate that as many as 20 percent of those serving overseas will need some mental health care services to cope with the stress of serving in a war zone. First, I want to say to my colleagues that the Department of Veterans Affairs already has in place numerous programs and services to respond to the needs of those veterans seeking care for mental health issues. Still, as Chairman of the Veterans' Affairs Committee, I believe it is important that we assure our brave servicemen and women, and the American people, that we are not satisfied with merely maintaining VA's ability to provide mental health services. Rather, we must assure that VA continues to improve and expand the treatment options available.

This section of the bill would authorize $95 million in both fiscal years 2006 and 2007 to improve and expand the mental health services available to our Nation's veterans. The Secretary of Veterans Affairs would be required to devote specific resources to certain important areas of treatment including, but not limited to $5 million to expand the number of clinical teams devoted to the treatment of Post-Traumatic Stress Disorder; $50 million to expand the services available to diagnose and treat veterans with substance abuse problems; $10 million to expand telehealth capabilities in areas of the country where access to basic mental health services is nearly impossible; $1 million to improve educational programs available for primary care providers to learn more about diagnosing and treating veterans with mental illness; $20 million to expand the number of community-based outpatient clinics with mental health services; and $5 million to expand VA's Mental Health Intensive Case Management Teams.

I want to make it clear to my colleagues that I am taking this approach because I am concerned about the availability of these services as much as anyone in the Senate. But, I am also concerned about recent moves to ''micro-manage'' the VA health care system by requiring, for example, that certain percentages of VA's budget be spent on one service or another, or that every VA facility have some certain clinical service available. These approaches, while well-intentioned, run the risk of diverting important resources away from services that are extremely important to our veterans. My approach is to put Congress on record as expecting improvements and expansion in certain important programs, attaching a reasonable amount of money to those efforts, and then monitoring the progress closely from the Veterans' Committee.

Section 12 addresses a point of legal contention that has restricted the sharing of medical information between the Department of Defense and VA. As a result, record transfers for patients who would be VA patients are not arriving in VA hands as quickly and as seamlessly as they should. This provision would make clear that DoD and VA may exchange health records information for the purpose of providing health care to beneficiaries of one system who seek to quickly move to the other for services.

Section 13 of the bill would direct VA to expand the number VA employees dedicated to serving the Veterans Readjustment Counseling Service's Global War on Terrorism (GWOT) Outreach Program. The Committee on Veterans' Affairs held a hearing earlier this year at which two GWOT counselors testified on the numerous services their program provides to returning service

members, specifically Guardsmen and Reservists coming back from Iraq and Afghanistan. In many cases, these GWOT counselors are the first VA officials to welcome home our troops at the airport, provide them with their first briefing on VA benefits and services, and steer those in need to counseling services and health care centers. This is a creative, vibrant program with only 50 employees that is just now beginning to reach its peak effect on returning combat veterans. I believe VA should expand its efforts in this area to ensure we are reaching everyone we can.

Section 14 of this bill would require VA to expand the number of Vet Centers capable of providing tele-health services and counseling to veterans returning from combat. Currently there are 21 Vet Center facilities that maintain this capability. And while that is a laudable effort, I believe we can do better. Tele-medicine offers a tremendous opportunity to bring many health services, particularly mental health services, to veterans who reside in areas of the country where those services would not otherwise be available. Practitioners are showing great results with tele-health services for mental health treatment, and our veterans are getting the services they need, closer to home, in a more timely fashion. Expansion of such success only seems logical.

Finally, section 15 of this bill would require the Secretary of Veterans Affairs to submit a report on all of the mental health data maintained by VA, including the actual geographic locations of collection and whether all of these points of data should continue to be collected.

Over the next several weeks, the Committee on Veterans' Affairs will be taking testimony on this bill and other legislation introduced by Senators to improve the range of services and benefits available to our Nation's veterans. I look forward to working with my colleagues throughout the rest of this session of Congress on these and other important efforts.

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. 1182

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

SECTION 1. SHORT TITLE; REFERENCES TO TITLE 38, UNITED STATES CODE.

(a) SHORT TITLE.—This Act may be cited as the ''Veterans Health Care Act of 2005''.

(b) REFERENCES.—Except as otherwise expressly provided, whenever in this Act an amendment or repeal is expressed in terms of an amendment or repeal to a section or other provision, the reference shall be considered to be made to a section or other provision of title 38, United States Code.

SEC. 2. COPAYMENT EXEMPTION FOR HOSPICE CARE.

Section 1710 is amended—

(1) in subsection (f)(1), by inserting ''(other than hospice care)'' after ''nursing home care''; and

(2) in subsection (g)(1), by inserting ''(other than hospice care)'' after ''medical services''.

SEC. 3. NURSING HOME BED LEVELS; EXEMPTION FROM EXTENDED CARE SERVICES COPAYMENTS FOR FORMER POWS.

Section 1710B is amended—

(1) by striking subsection (b);

(2) by redesignating subsections (c) through (e) as subsections (b) through (d), respectively; and.

(3) in subsection (b)(2), as redesignated—

(A) by redesignating subparagraphs (B) and (C) as subparagraphs (C) and (D), respectively; and

(B) by inserting after subparagraph (A) the following:

''(B) to a veteran who is a former prisoner of war;''.

SEC. 4. REIMBURSEMENT FOR CERTAIN VETERANS' OUTSTANDING EMERGENCY TREATMENT EXPENSES.

(a) IN GENERAL.—Subchapter III of chapter 17 is amended by inserting after section 1725 the following:

''§ 1725A. Reimbursement for emergency treatment expenses for which certain veterans remain personally liable

''(a)(1) Subject to subsection (c), the Secretary may reimburse a veteran described in subsection (b) for expenses resulting from emergency treatment furnished to the veteran in a non-Department facility for which the veteran remains personally liable.

''(2) In any case in which reimbursement is authorized under subsection (a)(1), the Secretary, in the Secretary's discretion, may, in lieu of reimbursing the veteran, make payment—

''(A) to a hospital or other health care provider that furnished the treatment; or

''(B) to the person or organization that paid for such treatment on behalf of the veteran.

''(b) A veteran referred to in subsection (a) is an individual who—

''(1) is enrolled in the health care system established under section 1705(a) of this title;

''(2) received care under this chapter during the 24-month period preceding the furnishing of such emergency treatment;

''(3) is entitled to care or services under a health-plan contract that partially reimburses the cost of the veteran's emergency treatment;

''(4) is financially liable to the provider of emergency care treatment for costs not covered by the veteran's health-plan contract, including copayments and deductibles; and

''(5) is not eligible for reimbursement for medical care or services under section 1725 or 1728 of this title.

''(c)(1) Any amount paid by the Secretary under subsection (a) shall exclude the amount of any payment the veteran would have been required to make to the United States under this chapter if the veteran had received the emergency treatment from the Department.

''(2) The Secretary may not provide reimbursement under this section with respect to any item or service—

''(A) provided or for which payment has been made, or can reasonably be expected to be made, under the veteran's health-plan contract; or

''(B) for which payment has been made or can reasonably be expected to be made by a third party.

''(3)(A) Payment by the Secretary under this section on behalf of a veteran to a provider of emergency treatment shall, unless rejected and refunded by the provider within 30 days of receipt, extinguish any liability on the part of the veteran for that treatment.

''(B) The absence of a contract or agreement between the Secretary and the provider, any provision of a contract or agreement, or an assignment to the contrary shall not operate to modify, limit, or negate the requirement under subparagraph (A).

''(4) In accordance with regulations prescribed by the Secretary, the Secretary shall—

''(A) establish criteria for determining the amount of reimbursement (which may include a maximum amount) payable under this section; and

''(B) delineate the circumstances under which such payment may be made, including requirements for requesting reimbursement.

''(d)(1) In accordance with regulations prescribed by the Secretary, the United States shall have the independent right to recover any amount paid under this section if, and to the extent that, a third party subsequently makes a payment for the same emergency treatment.

''(2) Any amount paid by the United States to the veteran, the veteran's personal representative, successor, dependents, or survivors, or to any other person or organization paying for such treatment shall constitute a lien in favor of the United States against any recovery the payee subsequently receives from a third party for the same treatment.

''(3) Any amount paid by the United States to the provider that furnished the veteran's emergency treatment shall constitute a lien against any subsequent amount the provider receives from a third party for the same emergency treatment for which the United States made payment.

''(4) The veteran or the veteran's personal representative, successor, dependents, or survivors shall—

''(A) ensure that the Secretary is promptly notified of any payment received from any third party for emergency treatment furnished to the veteran;

''(B) immediately forward all documents relating to a payment described in subparagraph (A);

''(C) cooperate with the Secretary in an investigation of a payment described in subparagraph (A); and

''(D) assist the Secretary in enforcing the United States right to recover any payment made under subsection (c)(3).

''(e) The Secretary may waive recovery of a payment made to a veteran under this section that is otherwise required under subsection (d)(1) if the Secretary determines that such waiver would be in the best interest of the United States, as defined by regulations prescribed by the Secretary.

''(f) For purposes of this section—

''(1) the term 'health-plan contract' includes—

''(A) an insurance policy or contract, medical or hospital service agreement, membership or subscription contract, or similar arrangement, under which health services for individuals are provided or the expenses of such services are paid;

''(B) an insurance program described in section 1811 of the Social Security Act (42 U.S.C. 1395c) or established by section 1831 of that Act (42 U.S.C. 1395j);

''(C) a State plan for medical assistance approved under title XIX of such Act (42 U.S.C. 1396 et seq.); and

''(D) a workers' compensation law or plan described in section 1729(A)(2)(B) of this title;

''(2) the term 'third party' means—

''(A) a Federal entity;

''(B) a State or political subdivision of a State;

''(C) an employer or an employer's insurance carrier; and

''(D) a person or entity obligated to provide, or pay the expenses of, such emergency treatment; and

''(3) the term 'emergency treatment' has the meaning given such term in section 1725 of this title.''.

(b) CLERICAL AMENDMENT.—The table of sections at the beginning of chapter 17 is amended by inserting after the item relating to section 1725 the following:

''Sec. 1725A. Reimbursement for emergency treatment expenses for which certain veterans remain personally liable.''.

SEC. 5. CARE FOR NEWBORN CHILDREN OF WOMEN VETERANS RECEIVING MATERNITY CARE .

(a) IN GENERAL.—Subchapter VIII of chapter 17 is amended by adding at the end the following:

''§ 1786. Care for newborn children of women veterans receiving maternity care

''The Secretary may furnish care to a newborn child of a woman veteran, who is receiving maternity care furnished by the Department, for not more than 14 days after the birth of the child if the veteran delivered the child in a Department facility or in another facility pursuant to a Department contract for the delivery services.''.

(b) CLERICAL AMENDMENT.—The table of sections at the beginning of chapter 17 is amended by inserting after the item relating to section 1785 the following:

''Sec. 1786. Care for newborn children of women veterans receiving maternity care.''.

SEC. 6. ENHANCEMENT OF PAYER PROVISIONS FOR HEALTH CARE FURNISHED TO CERTAIN CHILDREN OF VIETNAM VETERANS.

(a) HEALTH CARE FOR SPINA BIFIDA AND ASSOCIATED DISABILITIES.—Section 1803 is amended—

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

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

''(c)(1) If a payment made by the Secretary for health care under this section is less than the amount billed for such health care, the health care provider or agent of the health care provider may, in accordance with paragraphs (2) through (4), seek payment for the difference between the amount billed and the amount paid by the Secretary from a responsible third party to the extent that the provider or agent would be eligible to receive payment for such health care from such third party.

''(2) The health care provider or agent may not impose any additional charge on the beneficiary who received the health care, or the family of such beneficiary, for any service or item for which the Secretary has made payment under this section;

''(3) The total amount of payment a health care provider or agent may receive for health care furnished under this section may not exceed the amount billed to the Secretary.

''(4) The Secretary, upon request, shall disclose to such third party information received for the purposes of carrying out this section.''.

(b) HEALTH CARE FOR BIRTH DEFECTS AND ASSOCIATED DISABILITIES.—Section 1813 is amended—

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

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

''(c)(1) If payment made by the Secretary for health care under this section is less than the amount billed for such health care, the health care provider or agent of the health care provider may, in accordance with paragraphs (2) through (4), seek payment for the difference between the amount billed and the amount paid by the Secretary from a responsible third party to the extent that the provider or agent would be eligible to receive payment for such health care from such third party.

''(2) The health care provider or agent may not impose any additional charge on the beneficiary who received health care, or the family of such beneficiary, for any service or item for which the Secretary has made payment under this section;

''(3) The total amount of payment a health care provider or agent may receive for health care furnished under this section may not exceed the amount billed to the Secretary; and

''(4) The Secretary, upon request, shall disclose to such third party information received for the purposes of carrying out this section.''.

SEC. 7. IMPROVEMENTS TO HOMELESS PROVIDERS GRANT AND PER DIEM PROGRAM.

(a) PERMANENT AUTHORITY.—Section 2011 (a) is amended—

(1) in paragraph (1), by striking ''(1)''; and

(2) by striking paragraph (2).

(b) AUTHORIZATION OF APPROPRIATIONS.—Section 2013 is amended to read as follows:

''§ 2013. Authorization of appropriations

''There are authorized to be appropriated $130,000,000 for fiscal year 2006 and each subsequent fiscal year to carry out this subchapter.''.

SEC. 8. MARRIAGE AND FAMILY THERAPISTS.

(a) QUALIFICATIONS.—Section 7402(b) is amended—

(1) by redesignating paragraph (10) as paragraph (11); and

(2) by inserting after paragraph (9) the following:

''(10) MARRIAGE AND FAMILY THERAPIST.—To be eligible to be appointed to a marriage and family therapist position, a person must—

''(A) hold a master's degree in marriage and family therapy, or a comparable degree in mental health, from a college or university approved by the Secretary; and

''(B) be licensed or certified to independently practice marriage and family therapy in a State, except that the Secretary may waive the requirement of licensure or certification for an individual marriage and family therapist for a reasonable period of time recommended by the Under Secretary for Health.''.

(b) REPORT ON MARRIAGE AND FAMILY THERAPY WORKLOAD.—

(1) IN GENERAL.—Not later than 90 days after the date of enactment of this Act, the Under Secretary for Health, Department of Veterans Affairs, shall submit to the Committee on Veterans' Affairs of the Senate and the Committee on Veterans' Affairs of the House of Representatives a report on the provisions of post-traumatic stress disorder treatment by marriage and family therapists.

(2) CONTENTS.—The report submitted under paragraph (1) shall include—

(A) the actual and projected workloads in facilities of the Veterans Readjustment Counseling Service and the Veterans Health Administration for the provision of marriage and family counseling for veterans diagnosed with, or otherwise in need of treatment for, post-traumatic stress disorder;

(B) the resources available and needed to support the workload projections described in subparagraph (A);

(C) an assessment by the Under Secretary for Health of the effectiveness of treatment by marriage and family therapists; and

(D) recommendations, if any, for improvements in the provision of such counseling treatment.

SEC. 9. PAY COMPARABILITY FOR CHIEF NURSING OFFICER, OFFICE OF NURSING SERVICES.

Section 7404 is amended—

(1) in subsection (d), by striking ''subchapter III'' and inserting ''paragraph (e), subchapter III,''; and

(2) by adding at the end the following:

''(e) The position of Chief Nursing Officer, Office of Nursing Services, shall be exempt from the provisions of section 7451 of this title and shall be paid at a rate not to exceed the maximum rate established for the Senior Executive Service under section 5382 of title 5 United States Code, as determined by the Secretary.''.

SEC. 10. REPEAL OF COST COMPARISON STUDIES PROHIBITION.

Section 8110(a) is amended—

(1) by striking paragraph (5); and

(2) by redesignating paragraph (6) as paragraph (5).

SEC. 11. IMPROVEMENTS AND EXPANSION OF MENTAL HEALTH SERVICES.

(a) IN GENERAL.—The Secretary of Veterans affairs shall—

(1) expand the number of clinical treatment teams principally dedicated to the treatment of post-traumatic stress disorder in medical facilities of the Department of Veterans Affairs;

(2) expand and improve the services available to diagnose and treat substance abuse;

(3) expand and improve tele-health initiatives to provide better access to mental health services in areas of the country in which the Secretary determines that a need for such services exist due to the distance of such locations from an appropriate facility of the Department of Veterans Affairs;

(4) improve education programs available to primary care delivery professionals and dedicate such programs to recognize, treat, and clinically manage veterans with mental health care needs;

(5) expand the delivery of mental health services in community-based outpatient clinics of the Department of Veterans Affairs in which such services are not available as of the date of enactment of this Act; and

(6) expand and improve the Mental Health Intensive Case Management Teams for the treatment and clinical case management of veterans with serious or chronic mental illness.

(b) AUTHORIZATION OF APPROPRIATIONS.—There are authorized to be appropriated in each of fiscal years 2006 and 2007, $95,000,000 to improve and expand the treatment services and options available to veterans in need of mental health treatment from the Department of Veterans Affairs, of which—

(1) $5,000,000 shall be allocated to carry out subsection (a)(1);

(2) $50,000,000 shall be allocated to carry out subsection (a)(2);

(3) $10,000,000 shall be allocated to carry out subsection (a)(3);

(4) $1,000,000 shall be allocated to carry out subsection (a)(4);

(5) $20,000,000 shall be allocated to carry out subsection (a)(5); and

(6) $5,000,000 shall be allocated to carry out subsection (a)(6).

SEC. 12. DATA SHARING IMPROVEMENTS.

Notwithstanding any other provision of law, the Department of Veterans Affairs and the Department of Defense may exchange protected health information for—

(1) patients receiving treatment from the Department of Veterans Affairs; or

(2) individuals who may receive treatment from the Department of Veterans Affairs in the future, including all current and former members of the Armed Services.

SEC. 13. EXPANSION OF NATIONAL GUARD OUTREACH PROGRAM.

(a) REQUIREMENT.—The Secretary of Veterans Affairs shall expand the total number

of personal employed by the Department of Veterans Affairs as part of the Readjustment Counseling Service's Global War on Terrorism Outreach Program (referred to in this section as the ''Program'').

(b) COORDINATION.—In carrying out subsection (a), the Secretary shall coordinate participation in the Program by appropriate employees of the Veterans Benefits Administration and the Veterans Health Administration.

(c) INFORMATION AND ASSESSMENTS.—The Secretary shall ensure that—

(1) all appropriate health, education, and benefits information is available to returning members of the National Guard; and

(2) proper assessments of the needs in each of these areas is made by the Department of Veterans Affairs.

(d) COLLABORATION.—The Secretary of Veterans Affairs shall collaborate with appropriate State National Guard officials and provide such officials with any assets or services of the Department of Veterans Affairs that the Secretary determines to be necessary to carry out the Global War on Terrorism Outreach Program.

SEC. 14. EXPANSION OF TELE-HEALTH SERVICES.

(a) IN GENERAL.—The Secretary shall increase the number of Veterans Readjustment Counseling Service facilities capable of providing health services and counseling through tele-health linkages with facilities of the Veterans Health Administration.

(b) PLAN.—The Secretary shall submit to the Committee on Veterans' Affairs of the Senate and the Committee on Veterans' Affairs of the House of Representatives a plan to implement the requirement under subsection (a), which shall describe the facilities that will have such capabilities at the end of each of fiscal years 2005, 2006, and 2007.

SEC. 15. MENTAL HEALTH DATA SOURCES REPORT.

(a) IN GENERAL.—Not less than 180 days after the date of enactment of this Act, the Secretary of Veterans Affairs shall submit a report to the Committee on Veterans' Affairs of the Senate and the Committee on Veterans' Affairs of the House of Representatives describing the mental health data maintained by the Department of Veterans Affairs.

(b) CONTENTS.—The report submitted under subsection (a) shall include—

(1) a comprehensive list of the sources of all such data, including the geographic locations of facilities of the Department of Veterans Affairs maintaining such data;

(2) an assessment of the limitations or advantages to maintaining the current data configuration and locations; and

(3) any recommendations, if any, for improving the collection, use, and location of mental health data maintained by the Department of Veterans Affairs.

By Mr. WARNER (for himself, Mr. LIEBERMAN, Mr. ROBERTS, Ms. STABENOW, Mr. DURBIN, and Mr. ALLEN):

S. 1183. A bill to provide additional assistance to recipients of Federal Pell Grants who are pursuing programs of study in engineering, mathematics, science, or foreign languages; to the Committee on Health, Education, Labor, and Pensions.

Mr. WARNER. Mr. President, I rise today to introduce an important bill related to education and our national, homeland, and economic security. I am pleased to be joined in this bipartisan effort with Senators LIEBERMAN, ROBERTS, STABENOW, ALLEN, and DURBIN. I am grateful to each of them for working closely with me in crafting this legislation.

Our ability to remain ahead of the curve in scientific and technological advancements is a key component to ensuring America's national, homeland and economic security in the post 9/11 world of global terrorism. Yet alarmingly, the bottom line is that America faces a huge shortage of home-grown, highly trained scientific minds.

The situation America faces today is not unlike almost fifty years ago. On October 4, 1957, the Soviet Union successfully launched the first man-made satellite into space, Sputnik. The launch shocked America, as many of us had just assumed that we were preeminent in the scientific fields. While prior to that unforgettable day America enjoyed an air of post World War II invincibility, afterwards our nation recognized that there was a cost to its complacency. We had fallen behind.

In the months and years to follow, we would respond with massive investments in science, technology and engineering. In 1958, Congress passed the National Defense Education Act to stimulate advancement in science and math education. In addition, President Eisenhower signed into law legislation that established the National Aeronautics and Space Administration (NASA). And a few years later, in 1961, President Kennedy set the Nation's goal of landing a man on the moon within the decade.

These investments paid off. In the years following the Sputnik launch, America not only closed the scientific and technological gap with the Soviet Union, we surpassed them. Our renewed commitment to science and technology not only enabled us to safely land a man on the moon in 1969, it spurred research and development which helped ensure that our modern military has always had the best equipment and technology in the world. These post-Sputnik investments also laid the foundation for the creation of some of the most significant technologies of modern life, including personal computers and the Internet.

Why is any of this important to us today? Because as the old saying goes—he or she who fails to remember history is bound to repeat it.

The truth of the matter is that today, America's education system is coming up short in training the highly technical American minds that we now need and will continue to need far into the future.

The 2003 Program for International Student Assessment found that the math, problem solving, and science skills of fifteen year old students in the United States were below average when compared to their international counterparts in industrialized countries.

While slightly better news was presented by the recently released 2003 Trends in International Mathematics and Science Study (TIMSS), it is still nothing we should cheer about. TIMSS showed that eighth grade students in the U.S. had lower average math scores than fifteen other participating countries. U.S. science scores weren't much better.

Our colleges and universities are not immune to the waning achievement in math and science education. The National Science Foundation reports the percentage of bachelor degrees in science and engineering have been declining in the U.S. for nearly two decades. In fact, the proportion of college-age students earning degrees in math, science, and engineering was substantially higher in 16 countries in Asia and Europe than it was in the United States.

In the past, this country has been able to compensate for its shortfall in homegrown, highly trained, technical and scientific talent by importing the necessary brain power from foreign countries. However, with increased global competition, this is becoming harder and harder. More and more of our imported brain power is returning home to their native countries. And regrettably, as they return home, many American high tech jobs are being outsourced with them.

The effects of these educational trends are already being felt in various important ways. For example: according to the National Science Board, by 2010, if current trends continue, significantly less than 10 percent of all physical scientists and engineers in the world will be working in America. The American Physical Society reports that the proportion of articles by American authors in the Physical Review, one of the most important research journals in the world, has hit an all time low of 29 percent, down from 61 percent in 1983. And the U.S. production of patents, probably the most direct link between research and economic benefit, has declined steadily relative to the rest of the world for decades, and now stands at only 52 percent of the total.

Fortunately, we already have an existing Federal program up and running that, if modified, can help. Under current law, the $14 billion a year Pell Grant program awards recipients grants regardless of the course of study that the recipient chooses to pursue. So, under current law, two people from the same financial background are eligible for the same grant even though one chooses to major in the liberal arts while the other majors in engineering or science.

While I believe studying the liberal arts is an important component to having an enlightened citizenry, I also believe that given the unique challenges we are facing in this country, it is appropriate for us to add an incentive to the Pell Grant program to encourage individuals to pursue courses of study where graduates are needed to meet our national, homeland, and economic security needs.

That is why today I am introducing this legislation. The legislation is simple. It provides that at least every two

years, our Secretary of Education, in consultation with the Secretary of Defense, the Secretary of Homeland Security, and others, should provide a list of courses of study where America needs home-grown talent to meet our national, homeland, and economic security needs. Those students who pursue courses of study in these programs will be rewarded with a doubling of their Pell Grant to help them with the costs associated with obtaining their education.

We in the Congress have an obligation when expending taxpayer money, to do so in a manner that meets our nation's needs. Our Nation desperately needs more highly trained domestic workers. That is an indisputable fact. And, in the Pell Grant program, we have approximately $14 billion that is readily available to help meet this demand.

In closing, our world is vastly different today than it was when the Pell Grant program was created in 1972. My legislation is a common-sense modification of the Pell Grant program that will help America meet its new challenges. I hope my colleagues will join me in this endeavor.

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

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

S. 1183

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 ''21st Century Federal Pell Grant Plus Act''.

SEC. 2. RECIPIENTS OF FEDERAL PELL GRANTS WHO ARE PURSUING PROGRAMS OF STUDY IN ENGINEERING, MATHEMATICS, SCIENCE, OR FOREIGN LANGUAGES.

Section 401(b)(2) of the Higher Education Act of 1965 (20 U.S.C. 1070a(b)(2)) is amended by adding at the end the following:

''(C)(i) Notwithstanding subparagraph (A) and subject to clause (iii), in the case of a student who is eligible under this part and who is pursuing a degree with a major in, or a certificate or program of study relating to, engineering, mathematics, science (such as physics, chemistry, or computer science), or a foreign language, described in a list developed or updated under clause (ii), the amount of the Federal Pell Grant shall be the amount calculated for the student under subparagraph (A) for the academic year involved, multiplied by 2.

''(ii)(I) The Secretary, in consultation with the Secretary of Defense, the Secretary of the Department of Homeland Security, and the Director of the National Science Foundation, shall develop, update not less often than once every 2 years, and publish in the Federal Register, a list of engineering, mathematics, and science degrees, majors, certificates, or programs that if pursued by a student, may enable the student to receive the increased Federal Pell Grant amount under clause (i). In developing and updating the list the Secretaries and Director shall consider the following:

''(aa) The current engineering, mathematics, and science needs of the United States with respect to national security, homeland security, and economic security.

''(bb) Whether institutions of higher education in the United States are currently producing enough graduates with degrees to meet the national security, homeland security, and economic security needs of the United States.

''(cc) The future expected workforce needs of the United States required to help ensure the Nation's national security, homeland security, and economic security.

''(dd) Whether institutions of higher education in the United States are expected to produce enough graduates with degrees to meet the future national security, homeland security, and economic security needs of the United States.

''(II) The Secretary, in consultation with the Secretary of Defense, the Secretary of the Department of Homeland Security, and the Secretary of State, shall develop, update not less often than once every 2 years, and publish in the Federal Register, a list of foreign language degrees, majors, certificates, or programs that if pursued by a student, may enable the student to receive the increased Federal Pell Grant amount under clause (i). In developing and updating the list the Secretaries shall consider the following:

''(aa) The foreign language needs of the United States with respect to national security, homeland security, and economic security.

''(bb) Whether institutions of higher education in the United States are currently producing enough graduates with degrees to meet the national security, homeland security, and economic security needs of the United States.

''(cc) The future expected workforce needs of the United States required to help ensure the Nation's national security, homeland security, and economic security.

''(dd) Whether institutions of higher education in the United States are expected to produce enough graduates with degrees to meet the future national security, homeland security, and economic security needs of the United States.

''(iii) Each student who received an increased Federal Pell Grant amount under clause (i) to pursue a degree, major, certificate, or program described in a list published under subclause (I) or (II) of clause (ii) shall continue to be eligible for the increased Federal Pell Grant amount in subsequent academic years if the degree, major, certificate, or program, respectively, is subsequently removed from the list.

''(iv)(I) If a student who received an increased Federal Pell Grant amount under clause (i) changes the student's course of study to a degree, major, certificate, or program that is not included in a list described in clause (ii), then the Secretary shall reduce the amount of Federal Pell Grant assistance the student is eligible to receive under this section for subsequent academic years by an amount equal to the difference between the total amount the student received under this subparagraph and the total amount the student would have received under this section if this subparagraph had not been applied.

''(II) The Secretary shall reduce the amount of Federal Pell Grant assistance the student is eligible to receive in subsequent academic years by dividing the total amount to be reduced under subclause (I) for the student by the number of years the student received an increased Federal Pell Grant amount under clause (i), and deducting the result from the amount of Federal Pell Grant assistance the student is eligible to receive under this section for a number of subsequent academic years equal to the number of academic years the student received an increased Federal Pell Grant amount under clause (i).''.

By Mr. BIDEN:

S. 1184. A bill to waive the passport fees for a relative of a deceased member of the Armed Forces proceeding abroad to visit the grave of such member or to attend a funeral or memorial service for such member; to the Committee on Foreign Relations.

Mr. BIDEN. Mr. President, today I introduce a bill to remedy a small gap in our passport laws. The change that I propose could be important to family members of servicemembers who lose their lives in service of their country.

Under current law, the State Department may not charge a fee to issue a passport to relatives of a deceased member of the Armed Forces who are proceeding abroad to visit the grave of such a member. But the law as applied requires that the family be visiting an official gravesite overseas.

The law does not, however, allow the waiver of passport fees if the family is attending a funeral or memorial service for a servicemember killed in action, but who is buried or memorialized overseas. The need for such a waiver probably does not occur often, but it happens. Last year, a servicemember from my home State of Delaware was killed in action in Iraq. The servicemember was stationed in Germany and his wife was German. She wished for him to be buried in Germany. So all of his relatives in the United States needed to travel quickly, and many of them did not have passports. At a time of such grieving for a lost servicemember, the family of the fallen hero should not have to worry about paying passport fees, which can add up quickly for a family, Waiving the fee in such cases is the least that we can do.

I hope we can approve such a minor change in the law quickly. I urge my colleagues to support this bill.

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

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

S. 1184

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

SECTION 1. PASSPORT FEES.

Section 1 of the Act of June 4, 1920 (41 Stat. 750, chapter 223; 22 U.S.C. 214) is amended in the third sentence by striking ''or from a widow, child, parent, brother, or sister of a deceased member of the Armed Forces proceeding abroad to visit the grave of such member'' and inserting ''or from a widow, widower, child, parent, grandparent, brother, or sister of a deceased member of the Armed Forces proceeding abroad to visit the grave of such member or to attend a funeral or memorial service for such member''.

By Mr. DOMENICI (for himself, Mr. SCHUMER, Mr. COCHRAN, MR. ALLARD, and Mr. COLEMAN):

S. 1186. A bill to amend the Internal Revenue Code of 1986 to provide the same capital gains treatment for art and collectibles as for other investment property and to provide that a

deduction equal to fair market value shall be allowed for charitable contributions of literary, musical, artistic, or scholarly compositions created by the donor; to the Committee on Finance.

Mr. DOMENICI. Mr. President, I rise today to introduce again legislation to eliminate one of the great inconsistencies in the Internal Revenue Code.

The bill I am introducing today with Senator SCHUMER is designed to restore some internal consistency to the tax code as it applies to art and artists. No one has ever said that the tax code is fair even though it has always been a theoretical objective of the code to treat similar taxpayers similarly.

The bill I am introducing today would address two areas where similarly situated taxpayers are not treated the same.

Internal inconsistency number one deals with the long-term capital gains tax treatment of investments in art and collectibles. If a person invests in stocks or bonds and sells at a gain, the tax treatment is long term capital gains. The top capital gains tax rate is 15 percent. However, if the same person invests in art or collectibles the top rate is hiked up to 28 percent. Art for art's sake should not incur a higher tax rate simply for revenue's sake. That is a big impact on the pocketbook of the beholder.

Art and collectibles are alternatives to financial instruments as an investment choice. To create a tax disadvantage with respect to one investment compared to another creates an artificial market and may lead to poor investment allocations. It also adversely impacts those who make their livelihood in the cultural sectors of the economy.

Santa Fe, NM, is the third largest art market in the country. We have a diverse colony of artists, collectors and gallery owners. We have fabulous Native American rug weavers, potters and carvers. Creative giants like Georgia O'Keeffe, Maria Martinez, E. L. Blumenshein, Allan Houser, R.C. Gorman, and Glenna Goodacre have all chosen New Mexico as their home and as their artistic subject. John Nieto, Wilson Hurley, Clark Hulings, Veryl Goodnight, Bill Acheff, Susan Rothenberg, Bruce Nauman, Agnes Martin, Doug Hyde, Margaret Nez, and Dan Ostermiller are additional examples of living artists creating art in New Mexico.

Art, antiques, and collectibles are a $12 to $20 billion annual industry nationwide. In New Mexico, it has been estimated that art and collectible sales range between $500 million and one billion a year.

Economists have always been interested in the economics of the arts. Adam Smith is a well-known economist. He was also a serious, but little-known essayist on painting, dancing, and poetry. Similarly, Keynes was both a famous economist and a passionate devotee of painting. However, even artistically inclined economists have found it difficult to define art within the context of economic theory.

When asked to define jazz, Louis Armstrong replied: ''If you gotta ask, you ain't never going to know.'' A similar conundrum has challenged Galbraith and other economists who have grappled with the definitional issues associated with bringing art within the economic calculus. Original art objects are, as a commodity group, characterized by a set of attributes: every unit of output is differentiated from every other unit of output; art works can be copied but not reproduced; and the cultural capital of the nation has significant elements of public good.

Because art works can be resold, and their prices may rise over time, they have the characteristics of financial assets, and as such may be sought as a hedge against inflation, as a store of wealth, or as a source of speculative capital gain. A study by Keishiro Matsumoto, Samuel Andoh and James P. Hoban, Jr. assessed the risk-adjusted rates of return on art sold at Sotheby's during the 14-year period ending September 30, 1989. They concluded that art was a good investment in terms of average real rates of return. Several studies found that rates of return from the price appreciation on paintings, comic books, collectibles and modern prints usually made them very attractive long-term investments. Also, when William Goetzmann was at the Columbia Business School, he constructed an art index and concluded that painting price movements and stock market fluctuations are correlated.

I conclude that with art, as well as stocks, past performance is no guarantee of future returns, but the gains should be taxed the same.

In 1990, the editor of Art and Auction asked the question: ''Is there an 'efficient' art market?'' A well-known art dealer answered ''Definitely not. That's one of the things that makes the market so interesting.'' For everyone who has been watching world financial markets lately, the art market may be a welcome distraction.

Why do people invest in art and collectibles? Art and collectibles are something you can appreciate even if the investment doesn't appreciate. Art is less volatile. If buoyant and not so buoyant bond prices drive you berserk and spiraling stock prices scare you, art may be the appropriate investment for you. Because art and collectibles are investments, the long-term capital gains tax treatment should be the same as for stocks and bonds. This bill would accomplish that.

Artists will benefit. Gallery owners will benefit. Collectors will benefit. And museums benefit from collectors. About 90 percent of what winds up in museums like New York's Metropolitan Museum of Art comes from collectors.

Collecting isn't just for the hoity toity. It seems that everyone collects something. Some collections are better investments than others. Some collections are just bizarre. The Internet makes collecting big business, and flea market fanatics are avid collectors. In fact, people collect the darndest things. Books, duck decoys, chia pets, snowglobes, thimbles, handcuffs, spectacles, baseball cards, and guns are a few such ''collectibles.''

For most of these collections, capital gains isn't really an issue, but you never know. You may find that your collecting passion has created a tax predicament to phrase it politely. Art and collectibles are tangible assets. When you sell them, capital gains tax is due on any appreciation over your purchase price.

The bill provides capital gains tax parity because it lowers the top capital gains rate from 28 percent to 15 percent.

Internal inconsistency number two deals with the charitable deduction for artists donating their work to a museum or other charitable cause. When someone is asked to make a charitable contribution to a museum or to a fund raising auction, it shouldn't matter whether that person is an artist or not. Under current law, however, it makes a big difference. As the law stands now, an artist/creator can only take a deduction equal to the cost of the art supplies. The bill I am introducing will allow a fair market deduction for the artist.

It's important to note that this bill includes certain safeguards to keep the artist from ''painting himself a tax deduction.'' This bill applies to literary, musical, artistic, and scholarly compositions if the work was created at least 18 months before the donation was made, has been appraised, and is related to the purpose or function of the charitable organization receiving the donation. As with other charitable contributions, it is limited to 50 percent of adjusted gross income (AGI). If it is also a capital gain, there is a 30 percent of AGI limit. I believe these safeguards bring fairness back into the code and protect the Treasury against any potential abuse.

I hope my colleagues will help me put this internal consistency into the Internal Revenue Code.

I ask unanimous consent that and 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. 1186

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 ''Art and Collectibles Capital Gains Tax Treatment Parity Act''.

SEC. 2. CAPITAL GAINS TREATMENT FOR ART AND COLLECTIBLES.

(a) IN GENERAL.—Section 1(h) of the Internal Revenue Code of 1986 (relating to maximum capital gains rate) is amended by striking paragraphs (4) and (5) and inserting the following new paragraphs:

''(4) 28-PERCENT RATE GAIN.—For purposes of this subsection, the term '28-percent rate gain' means the excess (if any) of—

''(A) section 1202 gain, over

''(B) the sum of—

''(i) the net short-term capital loss, and

''(ii) the amount of long-term capital loss carried under section 1212(b)(1)(B) to the taxable year.

''(5) RESERVED.—.''.

(b) EFFECTIVE DATE.—The amendment made by this section shall apply to taxable years beginning after December 31, 2004.

SEC. 3. CHARITABLE CONTRIBUTIONS OF CERTAIN ITEMS CREATED BY THE TAXPAYER.

(a) IN GENERAL.—Subsection (e) of section 170 of the Internal Revenue Code of 1986 (relating to certain contributions of ordinary income and capital gain property) is amended by adding at the end the following new paragraph:

''(7) SPECIAL RULE FOR CERTAIN CONTRIBUTIONS OF LITERARY, MUSICAL, ARTISTIC, OR SCHOLARLY COMPOSITIONS.—

''(A) IN GENERAL.—In the case of a qualified artistic charitable contribution—

''(i) the amount of such contribution taken into account under this section shall be the fair market value of the property contributed (determined at the time of such contribution), and

''(ii) no reduction in the amount of such contribution shall be made under paragraph (1).

''(B) QUALIFIED ARTISTIC CHARITABLE CONTRIBUTION.—For purposes of this paragraph, the term 'qualified artistic charitable contribution' means a charitable contribution of any literary, musical, artistic, or scholarly composition, or similar property, or the copyright thereon (or both), but only if—

''(i) such property was created by the personal efforts of the taxpayer making such contribution no less than 18 months prior to such contribution,

''(ii) the taxpayer—

''(I) has received a qualified appraisal of the fair market value of such property in accordance with the regulations under this section, and

''(II) attaches to the taxpayer's income tax return for the taxable year in which such contribution was made a copy of such appraisal,

''(iii) the donee is an organization described in subsection (b)(1)(A),

''(iv) the use of such property by the donee is related to the purpose or function constituting the basis for the donee's exemption under section 501 (or, in the case of a governmental unit, to any purpose or function described under section 501(c)),

''(v) the taxpayer receives from the donee a written statement representing that the donee's use of the property will be in accordance with the provisions of clause (iv), and

''(vi) the written appraisal referred to in clause (ii) includes evidence of the extent (if any) to which property created by the personal efforts of the taxpayer and of the same type as the donated property is or has been—

''(I) owned, maintained, and displayed by organizations described in subsection (b)(1)(A), and

''(II) sold to or exchanged by persons other than the taxpayer, donee, or any related person (as defined in section 465(b)(3)(C)).

''(C) MAXIMUM DOLLAR LIMITATION; NO CARRYOVER OF INCREASED DEDUCTION.—The increase in the deduction under this section by reason of this paragraph for any taxable year—

''(i) shall not exceed the artistic adjusted gross income of the taxpayer for such taxable year, and

''(ii) shall not be taken into account in determining the amount which may be carried from such taxable year under subsection (d).

''(D) ARTISTIC ADJUSTED GROSS INCOME.—For purposes of this paragraph, the term 'artistic adjusted gross income' means that portion of the adjusted gross income of the taxpayer for the taxable year attributable to—

''(i) income from the sale or use of property created by the personal efforts of the taxpayer which is of the same type as the donated property, and

''(ii) income from teaching, lecturing, performing, or similar activity with respect to property described in clause (i).

''(E) PARAGRAPH NOT TO APPLY TO CERTAIN CONTRIBUTIONS.—Subparagraph (A) shall not apply to any charitable contribution of any letter, memorandum, or similar property which was written, prepared, or produced by or for an individual while the individual is an officer or employee of any person (including any government agency or instrumentality) unless such letter, memorandum, or similar property is entirely personal.

''(F) COPYRIGHT TREATED AS SEPARATE PROPERTY FOR PARTIAL INTEREST RULE.—In the case of a qualified artistic charitable contribution, the tangible literary, musical, artistic, or scholarly composition, or similar property and the copyright on such work shall be treated as separate properties for purposes of this paragraph and subsection (f)(3).''.

(b) EFFECTIVE DATE.—The amendment made by this section shall apply to contributions made after the date of the enactment of this Act in taxable years ending after such date.

By Mrs. BOXER (for herself and Mr. SCHUMER):

S. 1193. A bill to direct the Assistant Secretary of Homeland Security for the Transportation Security Administration to issue regulations requiring turbojet aircraft of air carriers to be equipped with missile defense systems, and for other purposes; to the Committee on Commerce, Science, and Transportation.

Mrs. BOXER. Mr. President, today I am reintroducing the Commercial Airline Missile Defense Act. This legislation is designed to ensure that our commercial aircraft are protected against the threat posed by shoulder-fired missiles.

I first introduced this legislation in February 2003 in response to two separate attacks attributed to al Qaeda terrorists. The first attack was the attempted shoot down of a U.S. military aircraft in Saudi Arabia. The second attack was against an Israeli passenger jet in Kenya. Fortunately, there were no casualties in either case.

But make no mistake, the threat posed by these weapons—also known as man-portable air defense systems (MANPADS)—is very real. In May 2002, the FBI said, ''. . . Given al Qaeda's demonstrated objective to target the U.S. airline industry, its access to U.S. and Russian-made MANPAD systems, and recent apparent targeting of U.S.-led military forces in Saudi Arabia, law enforcement agencies in the United States should remain alert to the potential use of MANPADS against U. S. aircraft.''

In February 2004, the Director of the Defense Intelligence Agency, Admiral Lowell Jacoby, testified before the Senate Intelligence Committee on current and projected national security threats. He stated the following: ''A MANPAD attack against civilian aircraft would produce large number of casualties, international publicity and a significant economic impact on aviation. These systems are highly portable, easy to conceal, inexpensive, available in the global weapons market and instruction manuals are on the internet. Commercial aircraft are not equipped with countermeasures and commercial pilots are not trained in evasive measures. An attack could occur with little or no warning. Terrorists may attempt to capitalize on these vulnerabilities.''

It is estimated that there are between 300,000 and one million shoulder-fired missiles in the world today—thousands are thought to be in the hands of terrorist and other non-state entities.

Since I first introduced my legislation in 2003, progress has been made in adapting countermeasures now being used by the military for use on commercial aircraft. A special program office has been created within the Department of Homeland Security that is working to demonstrate and test two prototype countermeasure systems. Flight testing is scheduled to begin in a matter of weeks.

This legislation, which I am again introducing with my primary cosponsor, Senator SCHUMER, states that the installation of countermeasure systems on commercial aircraft will begin no later than 6 months after the Secretary of Homeland Security certifies that the countermeasure system has successfully completed a program of operational test and evaluation.

We need to continue to move forward to ensure that commercial aircraft are protected from the threat posed by shoulder-fired missiles. I appreciate the hard work of my colleague in the House, Congressman STEVE ISRAEL, who is a real leader on this issue.

I hope my colleagues will support this important legislation.

SUBMITTED RESOLUTIONS

SENATE RESOLUTION 161—HONORING THE LIFE OF ROBERT M. LA FOLLETTE, SR., ON THE SESQUICENTENNIAL OF HIS BIRTH

Mr. FEINGOLD (for himself and Mr. KOHL) submitted the following resolution; which was referred to the Committee on the Judiciary:

S. RES. 161

Whereas Robert M. La Follette, Sr., better known as ''Fighting Bob'' La Follette, was born 150 years ago, on June 14, 1855, in Primrose, Wisconsin;

Whereas Fighting Bob was elected to 3 terms in the United States House of Representatives, 3 terms as Governor of Wisconsin, and 4 terms as a United States Senator;

Whereas Fighting Bob founded the Progressive wing of the Republican Party;