

“(4) The distribution of any handbill, pamphlet, leaflet, or other written or printed matter other than a program distributed as part of a funeral, memorial service, or ceremony.”.

(2) CLERICAL AMENDMENT.—The table of sections at the beginning of such chapter is amended by adding at the end the following new item:

“2413. Prohibition on certain demonstrations at cemeteries under control of National Cemetery Administration and at Arlington National Cemetery.”.

(b) CONSTRUCTION.—Nothing in section 2413 of title 38, United States Code (as amended by subsection (a)), shall be construed as limiting the authority of the Secretary of Veterans Affairs, with respect to property under control of the National Cemetery Administration, or the Secretary of the Army, with respect to Arlington National Cemetery, to issue or enforce regulations that prohibit or restrict conduct that is not specifically covered by section 2413 of such title (as so added).

**SEC. 3. PENALTY FOR VIOLATION OF PROHIBITION ON UNAPPROVED DEMONSTRATIONS AT CEMETERIES UNDER THE CONTROL OF THE NATIONAL CEMETERY ADMINISTRATION AND AT ARLINGTON NATIONAL CEMETERY.**

(a) PENALTY.—Chapter 67 of title 18, United States Code, is amended by adding at the end the following new section:

“§ 1387. Demonstrations at cemeteries under the control of the National Cemetery Administration and at Arlington National Cemetery

“Whoever violates section 2413 of title 38 shall be fined under this title, imprisoned for not more than one year, or both.”.

(b) CLERICAL AMENDMENT.—The table of sections at the beginning of such chapter is amended by adding at the end the following new item:

“1387. Demonstrations at cemeteries under the control of the National Cemetery Administration and at Arlington National Cemetery.”.

**SEC. 4. SENSE OF CONGRESS ON STATE RESTRICTION OF DEMONSTRATIONS NEAR MILITARY FUNERALS.**

It is the sense of Congress that each State should enact legislation to restrict demonstrations near any military funeral.

**AUTHORITY FOR COMMITTEES TO MEET**

**COMMITTEE ON ARMED SERVICES**

Mr. SPECTER. Mr. President, I ask unanimous consent that the Committee on Armed Services be authorized to meet during the session of the Senate on Wednesday, May 24, 2006, at 9:15 a.m., in executive session to consider the nomination of General Michael V. Hayden, USAF, for reappointment to the grade of general and to be director, Central Intelligence Agency.

The PRESIDING OFFICER. Without objection, it is so ordered.

**COMMITTEE ON ENERGY AND NATURAL RESOURCES**

Mr. SPECTER. Mr. President, I ask unanimous consent that the Committee on Energy and Natural Resources be authorized to meet during the session of the Senate on Wednesday, May 24 at 10 a.m. The purpose of this meeting is to consider pending calendar business which may be ready for consideration.

The PRESIDING OFFICER. Without objection, it is so ordered.

**COMMITTEE ON FOREIGN RELATIONS**

Mr. SPECTER. Mr. President, I ask unanimous consent that the Committee on Foreign Relations be authorized to meet during the session of the Senate on Wednesday, May 24, 2006, at 3:30 p.m., to hold a hearing on nominations.

The PRESIDING OFFICER. Without objection, it is so ordered.

**COMMITTEE ON HOMELAND SECURITY AND GOVERNMENTAL AFFAIRS**

Mr. SPECTER. Mr. President, I ask unanimous consent that the Committee on Homeland Security and Governmental Affairs be authorized to meet on Wednesday, May 24, 2006, at 9:30 a.m., to consider the nomination of R. David Paulison to be Under Secretary for Federal Emergency Management of the U.S. Department of Homeland Security.

The PRESIDING OFFICER. Without objection, it is so ordered.

**COMMITTEE ON THE JUDICIARY**

Mr. SPECTER. Mr. President, I ask unanimous consent that the Senate Committee on the Judiciary be authorized to meet to conduct a hearing on “Judicial Nominations” on Wednesday, May 24, 2006, at 2 p.m. in Dirksen Senate Office Building Room 226.

**Witness list**

Panel I: TBA.

Panel II: Andrew J. Guilford to be United States District Judge for the Central District of California, Frank D. Whitney to be United States District Judge for the Western District of North Carolina.

The PRESIDING OFFICER. Without objection, it is so ordered.

**SELECT COMMITTEE ON INTELLIGENCE**

Mr. SPECTER. Mr. President, I ask unanimous consent that the Select Committee on Intelligence be authorized to meet during the session of the Senate on May 24, 2006, at 2:30 p.m. to hold a closed Business Meeting.

The PRESIDING OFFICER. Without objection, it is so ordered.

**SUBCOMMITTEE ON DISASTER PREVENTION AND PREDICTION**

Mr. SPECTER. Mr. President, I ask unanimous consent that the Senate Committee on Commerce, Science, and Transportation’s Disaster Prevention and Prediction Subcommittee be authorized to meet on Wednesday, May 24, 2006, at 2:30 p.m., on the 2006 Hurricane Forecast and At-Risk Cities.

The PRESIDING OFFICER. without objection, it is so ordered.

**SUBCOMMITTEE ON AVIATION**

Mr. SPECTER. Mr. President, I ask unanimous consent that the Senate Committee on Commerce, Science, and Transportation’s Subcommittee on Aviation be authorized to meet on Wednesday, May 24, 2006, at 10 a.m. on NTSB reauthorization.

The PRESIDING OFFICER. Without objection, it is so ordered.

**SUBCOMMITTEE ON PUBLIC LANDS AND FORESTS**

Mr. SPECTER. Mr. President, I ask unanimous consent that the Sub-

committee on Public Lands and Forests of the Committee on Energy and Natural Resources be authorized to meet during the session of the Senate on Wednesday, May 24 at 2:30 p.m.

The purpose of the hearing is to receive testimony on the following bills: S. 2788, a bill to direct the exchange of certain land in Grand, San Juan and Uintah counties, Utah and for other purposes; S. 2466, to authorize and direct the exchange and conveyance of certain national forest land and other land in southeast Arizona; and S. 2567, to maintain the rural heritage of the Eastern Sierra and enhance the region’s tourism economy by designating certain public lands as wilderness and certain rivers as wild scenic rivers in the State of California, and for other purposes.

The PRESIDING OFFICER. Without objection, it is so ordered.

**EXECUTIVE SESSION**

**EXECUTIVE CALENDAR**

Mr. FRIST. Mr. President, I ask unanimous consent that the Senate now proceed to executive session to consider Calendar No. 630, Dirk Kempthorne, to be Secretary of the Interior.

The PRESIDING OFFICER. The clerk will report the nomination.

**DEPARTMENT OF THE INTERIOR**

The assistant legislative clerk read the nomination of Dirk Kempthorne, of Idaho, to be Secretary of the Interior.

**CLOTURE MOTION**

Mr. FRIST. Mr. President, I believe there is an objection on the other side of the aisle to setting a time certain for a vote on this Cabinet nomination. Given that objection, I now send a cloture motion to the desk.

The PRESIDING OFFICER. The cloture motion having been presented under rule XXII, the Chair directs the clerk to read the motion.

The assistant legislative clerk read as follows:

**CLOTURE MOTION**

We the undersigned Senators, in accordance with the provisions of rule XXII of the Standing Rules of the Senate, do hereby move to bring to a close debate on Executive Calendar No. 630, the nomination of Dirk Kempthorne, of Idaho, to be Secretary of the Interior.

Bill Frist, Pete Domenici, John Cornyn, Tom Coburn, Jeff Sessions, Wayne Alldredge, Lindsey Graham, Mel Martinez, Pat Roberts, Judd Gregg, Johnny Isakson, Jim DeMint, Lamar Alexander, John Thune, Richard Burr, Bob Bennett, Chuck Hagel.

Mr. FRIST. Mr. President, I ask unanimous consent that the live quorum be waived.

The PRESIDING OFFICER. Without objection, it is so ordered.

**LEGISLATIVE SESSION**

Mr. FRIST. Mr. President, I ask unanimous consent that the Senate now return to legislative session.

The PRESIDING OFFICER. Without objection, it is so ordered.

# RESPECT FOR AMERICA'S FALLEN HEROES ACT

Mr. FRIST. Mr. President, I ask unanimous consent that the Senate proceed to the immediate consideration of H.R. 5037, which was just received from the House.

The PRESIDING OFFICER. The clerk will report the bill by title.

The legislative clerk read as follows:

A bill (H.R. 5037) to amend titles 38 and 18 of the United States Code to prohibit certain demonstrations at cemeteries under the control of the National Cemetery Administration and at Arlington National Cemetery, and for other purposes.

There being no objection, the Senate proceeded to consider the bill.

Mr. CRAIG. Mr. President, I have sought recognition to comment on an amendment I am offering with Senators INHOFE and FRIST to H.R. 5037, the "Respect for America's Fallen Heroes Act. H.R. 5037 passed the House a couple of weeks ago by an overwhelming margin—408 to 3. It was conceived in response to hateful, intolerant demonstrations taking place at the funeral services of deceased servicemembers of the global war on terror. The fringe group responsible for these demonstrations believes that 2,752 of our Nation's finest have lost their lives in defense of America because, unbelievably, God is exacting His revenge on the United States for its permissive laws respecting homosexuality. It is a sad irony that the same 2,752 servicemembers who fought to guarantee the right of this fringe group to hold and express their beliefs are, along with the families of deceased servicemembers, now the victims of those same hateful, but protected, ideas.

First, it is important to point out that the House, led by Representative MIKE ROGERS of Michigan and Chairman BUYER, went to great lengths to carefully craft the House-passed legislation to preserve the dignity of military funerals while at the same time balancing first amendment rights. I applaud them, and Senator JIM INHOFE, the original sponsor of the Senate version of the bill, for being proactive in addressing a problem that no military family should experience at a VA national cemetery or at Arlington National Cemetery. Let me describe in brief the many provisions of their legislation that are left untouched by this amendment. We retain the prohibition on unapproved demonstrations on VA or Arlington cemetery grounds. We retain the language used to describe exactly what kind of demonstrations are prohibited. We retain the criminal penalties attached to those who violate the prohibitions. And we retain the language expressing the sense of the Congress that States enact legislation to restrict demonstrations near any military funeral. My amendment would

only modify the language of the underlying bill that restricts demonstrations that are within 500 feet of cemetery property. Let me explain why.

Many VA cemeteries are tucked in the middle of residential neighborhoods. Thus, the reach of the proposed Federal law in the underlying bill would extend to all private residences located within 500 feet of any VA cemetery property or Arlington National Cemetery. I am always sensitive to expanding zones of Federal influence or regulation, especially to cover lands that are not its own, unless it is absolutely necessary. And, furthermore, in a report by the Congressional Research Service and analyses from constitutional law experts, it was concluded that a 500-foot buffer zone around the perimeter of all cemetery lands may not be sufficiently narrow to pass constitutional muster. Constitutional questions surrounding the language are, of course, open to debate. But my goal here was to move legislation that was as narrowly tailored as possible and that didn't take away any of its effectiveness in prohibiting these offensive demonstrations at our national shrines.

There have yet to be any unapproved demonstrations either on VA cemetery property or outside of its grounds. There have been demonstrations at Arlington National Cemetery, but those demonstrations have been limited to the gates outside the front entrance of the cemetery. Practically speaking, if there were to be any demonstrations at VA cemeteries they would likely be at cemetery access points, just as at Arlington. It is VA's policy to hold funeral ceremonies at committal shelters located on its cemetery grounds. By design, those shelters at open national cemeteries are a minimum of 300 feet from any property line. And the line of sight from the property line is, also by design, typically obstructed by trees, shrubs, or other foliage. In addition, each national cemetery has three or four committal shelters, on average, which could be used for ceremonies. According to VA officials, only the cemetery superintendent knows beforehand where the committal shelter to be used for a particular funeral ceremony is located. So it is unlikely that demonstrators could effectively "disrupt" a cemetery funeral ceremony at any point other than an access point when a funeral procession was entering or leaving cemetery grounds. There simply are too many distance, visual, and logistical obstructions to overcome.

Therefore, my amendment would do the following. It would prohibit individuals who, as part of any demonstration, and within 150 feet of any point of ingress to or egress from cemetery property, be it by road, pathway, or otherwise, willfully make, or assist in the making, of any noise or diversion that disturbs or tends to disturb the peace or good order of a funeral, memorial service, or ceremony. This language will ensure that as a funeral pro-

cession is entering or exiting any cemetery that there is sufficient distance between the procession and the demonstrators, and that no slowdown of the procession is precipitated by a large gathering of demonstrators near the gates of cemetery property. Furthermore, my amendment would prohibit any demonstration, irrespective of its character, that is within 300 feet of cemetery property that would impede access to or egress from the property.

The principles behind my amendment are simple: As a funeral procession approaches a national cemetery, there should be no obstruction of that procession for any reason. The closer the procession is to the gates of the cemetery, the tighter the restrictions on demonstrations should necessarily be to ensure a dignified, solemn, and respectful burial at our national shrines.

Again, I thank Representative ROGERS of Michigan and Senator INHOFE for their leadership on this issue. And I ask my colleagues for their support.

Mr. FRIST. Mr. President, I ask unanimous consent that the amendment at the desk be agreed to, the bill, as amended, be read the third time and passed, the motion to reconsider be laid upon the table, and that any statements relating to the bill be printed in the RECORD.

The PRESIDING OFFICER. Without objection, it is so ordered.

The amendment (No. 4187) in the nature of a substitute was agreed to, as follows:

(Purpose: In the nature of a substitute)

Strike all after the enacting clause and insert the following:

## SECTION 1. SHORT TITLE.

This Act may be cited as the "Respect for America's Fallen Heroes Act".

## SEC. 2. PROHIBITION ON CERTAIN DEMONSTRATIONS AT CEMETERIES UNDER THE CONTROL OF THE NATIONAL CEMETERY ADMINISTRATION AND AT ARLINGTON NATIONAL CEMETERY.

(a) PROHIBITION.—

(1) IN GENERAL.—Chapter 24 of title 38, United States Code, is amended by adding at the end the following new section:

### "§2413. Prohibition on certain demonstrations at cemeteries under control of the National Cemetery Administration and at Arlington National Cemetery

"(a) PROHIBITION.—No person may carry out—

"(1) a demonstration on the property of a cemetery under the control of the National Cemetery Administration or on the property of Arlington National Cemetery unless the demonstration has been approved by the cemetery superintendent or the director of the property on which the cemetery is located; or

"(2) with respect to such a cemetery, a demonstration during the period beginning 60 minutes before and ending 60 minutes after a funeral, memorial service, or ceremony is held, any part of which demonstration—

"(A)(i) takes place within 150 feet of a road, pathway, or other route of ingress to or egress from such cemetery property; and

"(ii) includes, as part of such demonstration, any individual willfully making or assisting in the making of any noise or diversion that disturbs or tends to disturb the