

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

peace or good order of the funeral, memorial service, or ceremony; or

“(B) is within 300 feet of such cemetery and impedes the access to or egress from such cemetery.

“(b) DEMONSTRATION.—For purposes of this section, the term ‘demonstration’ includes the following:

“(1) Any picketing or similar conduct.

“(2) Any oration, speech, use of sound amplification equipment or device, or similar conduct that is not part of a funeral, memorial service, or ceremony.

“(3) The display of any placard, banner, flag, or similar device, unless such a display is part of a funeral, memorial service, or ceremony.

“(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.

The amendment was ordered to be engrossed and the bill to be read a third time.

The bill (H.R. 5037), as amended, was read the third time and passed.

Mr. FRIST. Mr. President, the bill we just passed was the Respect for America's Fallen Heroes Act. I would like to comment briefly, and I express my thanks to my colleagues for allowing me to proceed with this legislation and interrupt their debate.

I would like to read briefly from a news report that appeared in the Chicago Tribune this past April. And I quote:

Army Private First Class Amy Duerksen was 19 when she died last month in a U.S. military surgical hospital in Baghdad, 3 days after being shot in an accident. By all the accounts of her family, friends and superiors, she had been a model soldier, an impassioned patriot and a deeply devout Christian.

But none of that mattered to the six members of the Westboro Baptist Church who drove all night from their headquarters in Topeka, KS to show up outside Duerksen's March 17th funeral waving hateful placards.

I will not sully this institution or the memory of Amy Duerksen by repeating this group's detestable message. But I will tell you that today the Senate unanimously passed the Respect for America's Fallen Heroes Act, originally introduced by Congressman MIKE ROGERS of Michigan and passed in the House with near unanimous support.

Here in the Senate, we agreed, as one, that families like the Duerksens should never have to be harassed by protesters of any stripe as they bury their fallen warriors.

The Respect for America's Fallen Heroes Act will protect the sanctity of all 122 of our national cemeteries as shrines to our gallant dead.

It will ban demonstrations that occur within 500 feet of the cemetery without prior approval from an hour before a funeral until an hour after it. Violators will be fined up to \$100,000 and spend a year in jail.

It's a sad but necessary measure to protect what should be recognized by all reasonable people as a solemn, private, and deeply sacred occasion.

The bill has been carefully crafted to meet constitutional muster. As even the ACLU acknowledges, “The right of free expression is not an absolute right to express ourselves at any time, in any place, in any manner.”

And as the courts have identified, our national cemeteries are places deserving of the respect and honor of those interred or memorialized.

I thank Congressman ROGERS for bringing this issue to our attention. And I conclude with a passage from the Bible:

Blessed are those who mourn, for they will be comforted. Matthew 5:4.

We may never understand what compels a small group of small minded and mean hearted people to harass a family in mourning. But that is not our responsibility here. Our duty is to protect the solemn right of our military families to grieve the loss of America's fallen heroes in private, with the respect and dignity that is their due.

I look forward to this bill reaching the President's desk and being signed into law.

PUEBLO DE SAN ILDEFONSO CLAIMS SETTLEMENT ACT OF 2005

Mr. FRIST. Mr. President, I ask unanimous consent that the Senate

proceed to the immediate consideration of Calendar No. 419, S. 1773.

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

The bill clerk read as follows:

A bill (S. 1773) to resolve certain Native American claims in New Mexico, and for other purposes.

There being no objection, the Senate proceeded to consider the bill, which had been reported from the Committee on Indian Affairs with amendments, as follows:

(The parts of the bill intended to be inserted are shown in *italics*.)

S. 1773

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 “Pueblo de San Ildefonso Claims Settlement Act of 2005”.

SEC. 2. DEFINITIONS AND PURPOSES.

(a) DEFINITIONS.—In this Act:

(1) ADMINISTRATIVE ACCESS.—The term “administrative access” means the unrestricted use of land and interests in land for ingress and egress by an agency of the United States (including a permittee, contractor, agent, or assignee of the United States) in order to carry out an activity authorized by law or regulation, or otherwise in furtherance of the management of federally-owned land and resources.

(2) COUNTY.—The term “County” means the incorporated county of Los Alamos, New Mexico.

(3) LOS ALAMOS AGREEMENT.—The term “Los Alamos Agreement” means the agreement among the County, the Pueblo, the Department of Agriculture Forest Service, and the Bureau of Indian Affairs dated January, 22, 2004.

(4) LOS ALAMOS TOWNSITE LAND.—“Los Alamos Townsite Land” means the land identified as Attachment B (dated December 12, 2003) to the Los Alamos Agreement.

(5) NORTHERN TIER LAND.—“Northern Tier Land” means the land comprising approximately 739.71 acres and identified as “Northern Tier Lands” in Appendix B (dated August 3, 2004) to the Settlement Agreement.

(6) PENDING LITIGATION.—The term “Pending Litigation” means the case styled Pueblo of San Ildefonso v. United States, Docket Number 354, originally filed with the Indian Claims Commission and pending in the United States Court of Federal Claims on the date of enactment of this Act.

(7) PUEBLO.—The term “Pueblo” means the Pueblo de San Ildefonso, a federally recognized Indian tribe (also known as the “Pueblo of San Ildefonso”).

(8) SETTLEMENT AGREEMENT.—The term “Settlement Agreement” means the agreement entitled “Settlement Agreement between the United States and the Pueblo de San Ildefonso to Resolve All of the Pueblo's Land Title and Trespass Claims” and dated June 7, 2005.

(9) SETTLEMENT AREA LAND.—The term “Settlement Area Land” means the National Forest System land located within the Santa Fe National Forest, as described in Appendix B to the Settlement Agreement, that is available for purchase by the Pueblo under section 9(a) of the Settlement Agreement.

(10) SETTLEMENT FUND.—The term “Settlement Fund” means the Pueblo de San Ildefonso Land Claims Settlement Fund established by section 6.

(11) SISK ACT.—The term “Sisk Act” means Public Law 90-171 (commonly known as the “Sisk Act”) (16 U.S.C. 484a).